

**EXHIBIT 1**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 \_\_\_\_\_  
5 IN RE: \_\_\_\_\_ )  
6 HIGHLAND CAPITAL \_\_\_\_\_ ) CHAPTER 11  
7 MANAGEMENT, L.P., \_\_\_\_\_ )  
8 Reorganized Debtor. \_\_\_\_\_ ) CASE NO. 19-34054-SGJ11  
9 \_\_\_\_\_ )  
10  
11  
12

13 REMOTE ORAL DEPOSITION OF  
14 BH EQUITIES, LLC  
15 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE  
16 DUSTIN THOMAS  
17 Des Moines, Iowa  
18 Thursday, August 4, 2022  
19  
20  
21  
22

23 REPORTED REMOTELY BY:  
24 JANICE K. McMORAN, CSR, RDR, CRR, TCRR  
25 JOB NO. 213053

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1		1 APPEARANCES
2		2
3		3 APPEARING FOR THE REORGANIZED DEBTOR/PLAINTIFF:
4		4 JOHN MORRIS, ESQ.
5		5 HAYLEY WINOGRAD, ESQ.
6	Thursday, August 4, 2022	5 Pachulski Stang Ziehl & Jones LLP
7	10:00 a.m. CST	780 Third Avenue
8		6 New York, New York 10017
9		7
10		8 APPEARING FOR NEXPPOINT REAL ESTATE PARTNERS, LLC:
11		9 CHARLES GAMEROS, JR., ESQ.
12		Hoge & Gameros LLP
13	REMOTE ORAL DEPOSITION OF BH EQUITIES,	10 6116 North Central Expressway
14	LLC, BY AND THROUGH ITS DESIGNATED REPRESENTATIVE	Dallas, Texas 75206
15	DUSTIN "DUSTY" THOMAS, produced as a witness	11
16	remotely via Zoom videoconference at the instance	12
17	of the Reorganized Debtor, and duly remotely sworn,	APPEARING FOR THE WITNESS:
18	was taken in the above-styled and -numbered cause	13
19	on the 4th of August, 2022, from 10:00 a.m. Central	CASEY DOHERTY, ESQ.
20	Time until 1:23 p.m. Central Time, before Janice K.	14 Dentons US LLP
21	McMoran, RDR, CRR, TCRR, and Certified Shorthand	LyondellBasell Tower
22	Reporter in and for the State of Texas, reported	15 1221 McKinney Street
23	stenographically, with the witness appearing	Houston, Texas 77010
24	remotely from his office in Des Moines, Iowa,	16
25	pursuant to the Federal Rules of Civil Procedure.	17
		18 APPEARING FOR WILLIAM T. NEARY, U.S. TRUSTEE:
		19 LISA LAMBERT, ESQ.
		U.S. Department of Justice
		20 Office of the United States Trustee
		1100 Commerce
		21 Dallas, Texas 75242
		22
		23
		24
		25
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<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 don't – Travis Sheets is observing, but</p> <p>3 I'll let him introduce -- if he would</p> <p>4 like, he can introduce himself, but he</p> <p>5 will not be participating in the</p> <p>6 deposition. The same with Kyle Hougham.</p> <p>7 MR. SHEETS: I'm Travis Sheets. I am</p> <p>8 general counsel for BH Companies located</p> <p>9 in Des Moines, Iowa, and as Casey</p> <p>10 indicated, I'll just be observing today.</p> <p>11 THE REPORTER: I'm sorry. I didn't</p> <p>12 hear the last part.</p> <p>13 MR. SHEETS: Oh, Travis Sheets,</p> <p>14 general counsel for BH Companies. I'll be</p> <p>15 observing today. I'm located in</p> <p>16 Des Moines, Iowa.</p> <p>17 MR. HOUGHAM: And Kyle Hougham,</p> <p>18 corporate counsel for BH Companies. I'm</p> <p>19 located in Charlotte, North Carolina, also</p> <p>20 just observing today.</p> <p>21 THE REPORTER: And at this time, do</p> <p>22 counsel agree to allow me to swear the</p> <p>23 witness remotely?</p> <p>24 MR. MORRIS: Yes, please.</p> <p>25 (Witness sworn.)</p>	Page 8	Page 9

<p>1 BH EQUITIES, LLC - D. MILLER  2 appreciate that.  3 A. Thank you.  4 Q. Can you just state your name for the  5 record, sir?  6 A. Yeah. My name is Dustin Thomas.  7 Q. Okay. Mr. Thomas, are you employed  8 today?  9 A. I am.  10 Q. By whom?  11 A. That's not as easy as it might sound.  12 But I work for BH Equities. We have a parent  13 who I'm actually employed through with a master  14 services agreement.  15 Q. Okay.  16 A. And the parent is BH Management  17 Services.  18 Q. And do you have a title?  19 A. I do. I'm managing director of  20 capital markets and investor relations.  21 Q. Have you ever been deposed before?  22 A. I have one other time.  23 Q. Was it in a personal capacity or in a  24 business?  25 A. It was in a corporate capacity as a</p>	<p>Page 10</p> <p>1 BH EQUITIES, LLC - D. MILLER  2 just information witness.  3 Q. And how long ago was that?  4 A. Approximately three years, three and  5 a half.  6 Q. So really simple ground rules here.  7 This is a deposition where I am going to ask  8 questions and you'll provide answers. It's  9 important that you allow me to finish my  10 question before you begin an answer. Is that  11 fair?  12 A. That is fair.  13 Q. And I will attempt to do the same and  14 allow you to finish your answer before I begin  15 a question, but if I fail to do so, will you  16 let me know that?  17 A. I will do my best.  18 Q. If there's something that I ask that  19 you don't understand, will you let me know  20 that?  21 A. I will.  22 Q. If you need a break at any time, feel  23 free to let me know and I'll do my best to  24 accommodate you. I only request that you not  25 seek a break while a question is pending. Is</p>	<p>Page 11</p>
<p>1 BH EQUITIES, LLC - D. MILLER  2 that fair?  3 A. That is fair.  4 Q. Okay. From time to time, a lawyer  5 might object to a question. Allow the lawyers  6 to do their job and figure out what to do with  7 the objection before you begin your answer. Is  8 that understood?  9 A. That is understood.  10 Q. Okay. So what are your duties and  11 responsibilities as a managing director of BH  12 Equities?  13 A. I -- BH Equities invests in various  14 partnerships of real estate, and when we  15 invest, I help with the structure of those,  16 both debt and equity investment. And if we  17 have outside capital, I'm a liaison for that  18 outside capital.  19 Q. So that -- is it fair to say that the  20 nature of the business of BH Equities is to  21 invest in real estate partnerships, or at least  22 the primary business?  23 A. I would say that, yeah, alongside  24 sourcing investment opportunities for partners.  25 Q. How long have you been with BH</p>	<p>Page 12</p> <p>1 BH EQUITIES, LLC - D. MILLER  2 Equities?  3 A. Counting on my fingers, sorry. A  4 little over six years.  5 Q. And were you employed before being  6 employed by BH Equities?  7 A. I was.  8 Q. Can you describe just briefly your  9 professional background?  10 A. Yeah. Prior to BH Equities, I was a  11 partner in a private equity fund acquiring  12 small businesses of, you know, 5 to 10 million  13 of EBITDA. And prior to that, I was in private  14 investment on the balance sheet of a power  15 company.  16 Q. Did you graduate from college?  17 A. I did.  18 Q. Where did you go to college?  19 A. Simpson College, a liberal arts  20 school in, Indianola, Iowa.  21 Q. Do you have any graduate degrees?  22 A. I do. I have a master's in business  23 from the University of Iowa.  24 Q. Do you hold any licenses or  25 certificates?</p>	<p>Page 13</p>

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. I do. I hold the chartered financial</p> <p>3 analyst designation and the chartered</p> <p>4 alternative investment analyst designation.</p> <p>5 Q. Within the BH Equities corporate</p> <p>6 structure, to whom do you report?</p> <p>7 A. I report to Travis Sheets, our</p> <p>8 general counsel.</p> <p>9 Q. Have you spoken with -- are you</p> <p>10 familiar with the entity called HCRE or what</p> <p>11 was known as HCRE?</p> <p>12 A. Only through our transactions.</p> <p>13 Q. And have you spoken with anybody that</p> <p>14 you believed was acting on behalf of HCRE in</p> <p>15 connection with today's deposition?</p> <p>16 A. I have not.</p> <p>17 Q. Do you know whether anybody acting on</p> <p>18 behalf of BH Equities has communicated with</p> <p>19 anybody acting on behalf of HCRE concerning</p> <p>20 today's deposition?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. I'd like to -- so from time to time</p> <p>23 today, I'm going to ask my assistant, La Asia</p> <p>24 Carty, to put some documents on the screen.</p> <p>25 You know, this is not a test. Some of the</p>	Page 14	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 documents that we'll put up there, obviously,</p> <p>3 are very lengthy. I'm going to show you</p> <p>4 portions of documents. It would be much easier</p> <p>5 if we were in a room together. So that if you</p> <p>6 think that there's portions of a document that</p> <p>7 you need to read in order to -- in order to</p> <p>8 have context, in order to kind of fully</p> <p>9 understand the questions that I'm asking, will</p> <p>10 you let me know that?</p> <p>11 A. I will.</p> <p>12 Q. Okay. So the first document that I'd</p> <p>13 like to put up on the screen, which we've</p> <p>14 marked as, let's call it BH-1, is the subpoena,</p> <p>15 the amended subpoena that Highland served in</p> <p>16 this case.</p> <p>17 And before we get to that, actually,</p> <p>18 I just want to deal with a few definitions.</p> <p>19 As I mentioned at the beginning I</p> <p>20 represent Highland Capital Management, L.P.</p> <p>21 I'm going to try to refer to that entity as</p> <p>22 HCMLP. Is that fair?</p> <p>23 A. Yep, I understand that.</p> <p>24 Q. Okay. And then there's another</p> <p>25 entity that was a party to the amended and</p>	Page 15
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 restated LLC agreement that we'll talk about in</p> <p>3 a few minutes that was called HCRE Partners,</p> <p>4 LLC. I think you told me that you're familiar</p> <p>5 with that entity, right?</p> <p>6 A. Yes.</p> <p>7 Q. And if I use the -- if I use the term</p> <p>8 HCRE, that's the entity that I'll be referring</p> <p>9 to, okay?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And you're familiar with an entity</p> <p>12 called SE Multifamily Holdings, LLC; is that</p> <p>13 right?</p> <p>14 A. Yeah.</p> <p>15 Q. All right. I may refer to that</p> <p>16 either as SE Multifamily or SEM. Is that fair?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then I'm going to refer to</p> <p>19 the entity either that you're employed by or</p> <p>20 that you have a shared services agreement with</p> <p>21 as either BH or BH Equities, okay?</p> <p>22 A. Understood.</p> <p>23 (Exhibit 1 marked.)</p> <p>24 Q. Okay. So let's go back to the</p> <p>25 subpoena. Have you seen this document before?</p>	Page 16	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. I have.</p> <p>3 Q. Okay. And is it your understanding,</p> <p>4 are you aware that you're giving testimony</p> <p>5 today in your capacity as a corporate</p> <p>6 representative of BH Equities?</p> <p>7 A. Yes, I am aware.</p> <p>8 Q. Okay.</p> <p>9 MR. MORRIS: Can we go to, I guess</p> <p>10 it's page 2 of the attachment? Yeah,</p> <p>11 right there.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Have you seen these topics before</p> <p>14 today?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And are you prepared to testify on</p> <p>17 behalf of BH Equities as to each of these</p> <p>18 topics?</p> <p>19 A. I am.</p> <p>20 Q. Did you do anything to prepare for</p> <p>21 today's deposition?</p> <p>22 A. I did.</p> <p>23 Q. What did you do?</p> <p>24 A. I reviewed the bulk of our discovery.</p> <p>25 And, pardon me, the legal terms are not second</p>	Page 17

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 nature to me. And then I talked with Matt</p> <p>3 Mulcahy, as our BH Equities controller as well,</p> <p>4 on a couple of clarifications.</p> <p>5 Q. And when you used the phrase "the</p> <p>6 bulk of discovery," you're talking about the</p> <p>7 documents that BH Equities produced to Highland</p> <p>8 in response to the subpoena. Do I have that</p> <p>9 right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And can you tell me for the</p> <p>12 record who -- it's Matt Mulcahy?</p> <p>13 A. Mulcahy, yes.</p> <p>14 Q. Okay. Who is Mr. Mulcahy?</p> <p>15 A. Mr. Mulcahy is the controller for BH</p> <p>16 Equities and its, you know, various investment</p> <p>17 subsidiaries.</p> <p>18 Q. Did Mr. Mulcahy play any role in</p> <p>19 connection with the SE Multifamily transaction?</p> <p>20 A. He would have coordinated certain</p> <p>21 accounting matters.</p> <p>22 Q. Other than Mr. Mulcahy and BH</p> <p>23 Equities' counsel, did you speak with anybody</p> <p>24 else to prepare for today's deposition?</p> <p>25 A. No, not directly.</p>	Page 18	Page 19
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Do you understand that?</p> <p>3 A. I do.</p> <p>4 Q. Okay. So other than -- other than</p> <p>5 your conversations with counsel and Mr. Mulcahy</p> <p>6 and your review of the e-mails that BH</p> <p>7 produced, that's the totality of your</p> <p>8 preparation for topic number 1? Do I have that</p> <p>9 right?</p> <p>10 A. Alongside with reading the agreement</p> <p>11 several times.</p> <p>12 Q. Okay. I appreciate that.</p> <p>13 Topic number 2 is Schedule A,</p> <p>14 including all communications with either HCMLP</p> <p>15 or HCRC concerning that Schedule A.</p> <p>16 Do you have an understanding of what</p> <p>17 Schedule A is?</p> <p>18 A. I do.</p> <p>19 Q. And do you believe that you are</p> <p>20 adequately prepared to testify as to that</p> <p>21 topic?</p> <p>22 A. I do.</p> <p>23 Q. Is there anybody that you think you</p> <p>24 should have spoken to about that topic that you</p> <p>25 kind of forgot to or that you wish you had?</p>	Page 20	Page 21

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. MORRIS: No problem. It's just</p> <p>3 NexPoint's written response to the claim</p> <p>4 objection.</p> <p>5 MR. DOHERTY: Okay. Thank you,</p> <p>6 Mr. Morris.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. All right. So let's go back to the</p> <p>9 topic. Mr. Thomas, have you personally ever</p> <p>10 seen the response?</p> <p>11 A. I believe that was provided to me,</p> <p>12 and I did review it.</p> <p>13 Q. Okay. And BH Equities is aware today</p> <p>14 of HCRE's contention as set forth in paragraph</p> <p>15 5, right?</p> <p>16 A. I believe so.</p> <p>17 Q. Do you know when BH Equities first</p> <p>18 learned -- actually, I'm going to use a defined</p> <p>19 term just to make our lives simpler. The</p> <p>20 quotation that we have in topic 4 says, "All</p> <p>21 facts and communications concerning HCRE's</p> <p>22 contention that" -- and then there's a</p> <p>23 quotation.</p> <p>24 Do you see that?</p> <p>25 A. Yes, sir.</p>	Page 22	Page 23
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 agreement was effective as of August 23rd,</p> <p>3 2018, correct?</p> <p>4 A. I am.</p> <p>5 Q. Okay. Did you personally have any</p> <p>6 role in the negotiation of the amended</p> <p>7 agreement?</p> <p>8 A. I was involved in the back and forth</p> <p>9 and working with parties during the -- that</p> <p>10 time period to -- as the agreement was -- was</p> <p>11 going back and forth.</p> <p>12 Q. Were there any particular issues that</p> <p>13 you were personally focused on?</p> <p>14 A. Yes. The allocation -- the biggest</p> <p>15 issue was getting capital back to the parties</p> <p>16 prior to any allocations on percentages or</p> <p>17 those things that I was focused on.</p> <p>18 Q. Can you identify -- when did you</p> <p>19 first get involved in this project? Do you</p> <p>20 recall?</p> <p>21 A. Prior to the closing of the purchase</p> <p>22 of the assets, I would have been involved.</p> <p>23 Q. And when was the closing?</p> <p>24 A. I believe it was September 26th of</p> <p>25 2018.</p>	Page 24	Page 25

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Q. Now, there were three other parties</p> <p>3 to the amended agreement, right? Liberty,</p> <p>4 HCRE, and HCMLP. Do I have that right?</p> <p>5 A. Yes, that's my understanding.</p> <p>6 Q. Are you able to identify for me the</p> <p>7 people who were representing the interests of</p> <p>8 each of those parties and the drafting,</p> <p>9 negotiation, and execution of the amended</p> <p>10 agreement? And if you want me to take them one</p> <p>11 at a time, I'm happy to.</p> <p>12 A. Yeah, that would be...</p> <p>13 Q. From BH Equities' perspective as you</p> <p>14 were negotiating this agreement, did BH</p> <p>15 Equities form a view that HCMLP and HCRE and</p> <p>16 Liberty were related parties?</p> <p>17 A. Yes.</p> <p>18 Q. And did -- was this more of a</p> <p>19 bilateral negotiation between BH Equities on</p> <p>20 the one hand and HCMLP and HCRE and Liberty on</p> <p>21 the other hand?</p> <p>22 A. Yes.</p> <p>23 Q. Can you identify the people who were</p> <p>24 working on behalf of -- withdrawn.</p> <p>25 Based on that, for convenience I'm</p>	Page 26	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 going to use the phrase "Highland" to refer</p> <p>3 to -- withdrawn.</p> <p>4 I'm going to use the phrase</p> <p>5 "Highland" to refer to HCRE, HCMLP, and</p> <p>6 Liberty. Is that okay?</p> <p>7 A. That's okay, yes.</p> <p>8 Q. Okay. Can you identify for me the</p> <p>9 individuals who were representing the interests</p> <p>10 of Highland in connection with the negotiation</p> <p>11 of the amended agreement?</p> <p>12 A. I can identify my primary</p> <p>13 correspondence during that time. Is that</p> <p>14 acceptable?</p> <p>15 Q. Sure.</p> <p>16 A. I was primarily corresponding with</p> <p>17 Paul Broaddus. Freddy Chang was cc'd on much</p> <p>18 of the correspondence and occasionally chimed</p> <p>19 in. And then only by copy of e-mail, I</p> <p>20 believe, Wick Phillips was the law firm</p> <p>21 representing and working with them.</p> <p>22 Q. And was Wick Phillips involved in the</p> <p>23 drafting, negotiation, or review of the amended</p> <p>24 LLC agreement, to the best of your knowledge?</p> <p>25 A. I can't say for certain because I</p>	Page 27
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 didn't correspond with them directly.</p> <p>3 Q. Fair enough.</p> <p>4 How about Matt McGraner? Is he</p> <p>5 somebody who was involved on behalf of Highland</p> <p>6 in the negotiation, drafting, and review of the</p> <p>7 amended agreement?</p> <p>8 A. I did not have direct correspondence</p> <p>9 with Mr. McGraner on the topic.</p> <p>10 Q. Do you know -- was there anybody</p> <p>11 involved in the negotiation or drafting of the</p> <p>12 agreement who BH Equities believed was looking</p> <p>13 out exclusively for the interests of HCMLP?</p> <p>14 A. As -- you know, kind of in the</p> <p>15 framing of your question, we were viewing them</p> <p>16 as a bilateral entity. So -- so I can't say</p> <p>17 for certain if they were or weren't as to</p> <p>18 who -- who was looking after what interest.</p> <p>19 Q. And that's all I'm asking for is the</p> <p>20 perspective of BH Equities, was there anybody</p> <p>21 from BH Equities' perspective that BH Equities</p> <p>22 believed was looking out only for HCMLP's</p> <p>23 interests?</p> <p>24 A. Again, we viewed them as related</p> <p>25 parties and coordinating amongst themselves as</p>	Page 28	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 necessary. But we viewed it as a bilateral</p> <p>3 negotiation, as you framed it.</p> <p>4 Q. Did you ever -- to the best of your</p> <p>5 knowledge, did BH Equities ever communicate</p> <p>6 with anybody who claimed to represent the</p> <p>7 exclusive interests of Liberty?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. And to the best of BH Equities'</p> <p>10 knowledge, did anybody ever represent to BH</p> <p>11 Equities that there was an individual who was</p> <p>12 looking out for the exclusive interests of</p> <p>13 HCRE?</p> <p>14 A. Again, we lumped HCRE and HCM kind of</p> <p>15 together as the two -- the two large parties</p> <p>16 kind of, you know, related and things. So</p> <p>17 exclusively, no, given that context.</p> <p>18 Q. Okay. Are you familiar with the</p> <p>19 phrase "Project Unicorn"?</p> <p>20 A. I am.</p> <p>21 Q. Do you have an understanding of what</p> <p>22 that phrase means?</p> <p>23 A. Yes.</p> <p>24 Q. And what's your understanding of the</p> <p>25 phrase "Project Unicorn"?</p>	Page 29

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      A. Project Unicorn was a marketing</p> <p>3 phrase for a portfolio of -- I believe it was</p> <p>4 26 properties marketed by -- by CBRE as</p> <p>5 Starwood was -- as Starwood or Starwood</p> <p>6 affiliates were selling these properties, and</p> <p>7 they were purchased by SE Multifamily LLC.</p> <p>8      Q. All right. Do you know why this</p> <p>9 project was given the name Project Unicorn?</p> <p>10     A. No, sir.</p> <p>11     Q. Sometimes people use the word unicorn</p> <p>12 to refer to something unique. Did you ever</p> <p>13 participate in any discussions with anybody</p> <p>14 where they suggested that they were, you know,</p> <p>15 unique or rare features of a transaction of</p> <p>16 this type?</p> <p>17     A. My understanding is the designation</p> <p>18 was given by the marketing firm, which would be</p> <p>19 in line with precedent that the investment bank</p> <p>20 or brokerage firm would give the project its</p> <p>21 name. And it's typically under -- included in</p> <p>22 the NDA and things like that.</p> <p>23     Q. Okay. Do you know when BH Equities</p> <p>24 first learned of Project Unicorn?</p> <p>25     A. Specifically, no. It would have been</p>	Page 30	Page 31
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2 signatory to the KeyBank loan, is it?</p> <p>3      A. That's correct.</p> <p>4      Q. Okay. Did BH Equities provide any</p> <p>5 services or any resources, including capital of</p> <p>6 any kind, in connection with the negotiation or</p> <p>7 drafting of the KeyBank loan?</p> <p>8      A. That's a bit nuanced. There was</p> <p>9 underwriting and things like that done on</p> <p>10 behalf of all parties involved. Underwriting,</p> <p>11 diligence, those kinds of things, which I'm</p> <p>12 certain was used as part of the negotiation</p> <p>13 work with KeyBank to secure the loan.</p> <p>14     Q. Were you working with Highland on</p> <p>15 obtaining the KeyBank loan?</p> <p>16     A. Again, it's nuanced. Directly</p> <p>17 working as an agent or things like that, no.</p> <p>18     Q. Were they keeping you informed?</p> <p>19     A. In parts, yes. It was an important</p> <p>20 capitalization to the transaction.</p> <p>21     Q. Is it BH Equities' understanding that</p> <p>22 the KeyBank loan was a necessary component to</p> <p>23 the closing of the transaction on September</p> <p>24 26th?</p> <p>25     A. Yes.</p>	Page 32	Page 33

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2    whether BH Equities made any investment in SE</p> <p>3   Multifamily in the year 2018?</p> <p>4    A. Yes, we did.</p> <p>5    Q. Okay. Can you describe for me the</p> <p>6   investment that BH Equities made in SE</p> <p>7   Multifamily in 2018?</p> <p>8    A. The investment in totality was</p> <p>9   approximately 21.5 million, I believe.</p> <p>10   Q. And when you say it was made in 2018,</p> <p>11   is that because the agreement was ultimately</p> <p>12   made effective as of August 2018, or was the</p> <p>13   actual cash – well, withdrawn. Let me ask</p> <p>14   this.</p> <p>15       You mentioned a \$21 million</p> <p>16   investment. Is that an actual cash outlay by</p> <p>17   BH Equities?</p> <p>18    A. Yes.</p> <p>19    Q. And where did that money go, do you</p> <p>20   know?</p> <p>21    A. If went to purchase the properties.</p> <p>22    Q. And do you know when BH Equities made</p> <p>23   the \$21 million investment?</p> <p>24    A. It would have been in tranches</p> <p>25   between the -- and, again, I'm using air quotes</p>	Page 34	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2   here – the broad Highland group entities,</p> <p>3   HCRE, HCM, et cetera. There are expenses</p> <p>4   leading up such as, you know, earnest money,</p> <p>5   loan app fees, those kind of things, and we</p> <p>6   would have likely shared in parts of that. And</p> <p>7   then by the time the transaction closed on</p> <p>8   September 26th, the remaining funds would have</p> <p>9   been invested, likely funded through title,</p> <p>10   potentially a little bit directly to a bank</p> <p>11   account. But the bulk would have gone through</p> <p>12   title or to pay for pre- -- preclosing</p> <p>13   expenses.</p> <p>14    Q. And so do I have this right, that BH</p> <p>15   Equities laid out the \$21 million in 2018</p> <p>16   before there was an actual written agreement?</p> <p>17    A. That is correct.</p> <p>18       MR. DOHERTY: Objection, form.</p> <p>19   BY MR. MORRIS:</p> <p>20    Q. Was the \$21 million investment the</p> <p>21   subject of negotiation? Like, how was that</p> <p>22   number arrived at?</p> <p>23    A. It was -- it was a number used to</p> <p>24   close the transaction, and all parties were</p> <p>25   aware that BH was investing that money as a</p>	Page 35
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2   member of SE Multifamily at that time. So it</p> <p>3   was a known fact amongst all the parties</p> <p>4   participating.</p> <p>5    Q. And when you use the phrase</p> <p>6   "parties," are you talking about the parties</p> <p>7   that ultimately became members of SE</p> <p>8   Multifamily or something else?</p> <p>9    A. Yes. Yeah, the additional members</p> <p>10   and parties there.</p> <p>11   Q. Do you know if KeyBank was aware of</p> <p>12   the role that BH Equities was playing?</p> <p>13   A. I don't know specifically, as we</p> <p>14   weren't involved. I would assume so, though.</p> <p>15   Q. Prior to 2018, had any agreement been</p> <p>16   reached on the nature of the interest that</p> <p>17   BH Equities was going to receive in exchange</p> <p>18   for its \$21 million investment?</p> <p>19   A. I don't believe there was anything</p> <p>20   formal fully agreed to at that time.</p> <p>21   Q. BH Equities ultimately obtained a</p> <p>22   6 percent interest in SE Multifamily, right?</p> <p>23   A. It's more nuanced than that. I'm</p> <p>24   sorry, I don't mean to avoid the question, but</p> <p>25   given the -- the written how capital flows and</p>	Page 36	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2   things like that, it's more nuanced than just</p> <p>3   the 6 percent. So I -- so I wouldn't say that</p> <p>4   we only had a 6 percent interest, so to speak.</p> <p>5    Q. How would you characterize</p> <p>6   BH Equities' interest in SE Multifamily? How</p> <p>7   would you describe it?</p> <p>8    A. The expectation was we would give</p> <p>9   capital back, and then the residual interest</p> <p>10   thereafter was what was up for negotiation.</p> <p>11   Q. What do you mean, it was up for</p> <p>12   negotiation?</p> <p>13       MR. DOHERTY: Objection. And I don't</p> <p>14   want to make it -- John, you can tell me</p> <p>15   not to say anything. I think I see a</p> <p>16   disconnect, but if you want me to let you</p> <p>17   proceed, I will.</p> <p>18       MR. MORRIS: Yeah, go ahead, Casey.</p> <p>19   I appreciate it. Go ahead.</p> <p>20       MR. DOHERTY: Okay. I think there</p> <p>21   might be a disconnect on -- with at least</p> <p>22   for me on the time -- the time frame for</p> <p>23   the question, about after the amended</p> <p>24   agreement or before about --</p> <p>25       MR. MORRIS: Ah, okay.</p>	Page 37

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. DOHERTY: That's just my humble</p> <p>3 suggestion there, but I'll -- okay. All</p> <p>4 right.</p> <p>5 MR. MORRIS: I appreciate that.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. In the amended agreement as executed,</p> <p>8 did BH Equities obtain a 6 percent equity</p> <p>9 interest in SE Multifamily?</p> <p>10 A. Again, it's more nuanced than that.</p> <p>11 We have six -- we have an interest of 6 percent</p> <p>12 after the return of capital and those things,</p> <p>13 as the agreement was written.</p> <p>14 Q. Okay. So after capital is returned,</p> <p>15 SE Multifamily -- withdrawn.</p> <p>16 After the original capital investment</p> <p>17 is returned, BH Equities would have a 6 percent</p> <p>18 interest in SE Multifamily. Do I have that</p> <p>19 right?</p> <p>20 A. Yes, that's a correct</p> <p>21 characterization.</p> <p>22 Q. Okay. And at what point in time was</p> <p>23 an agreement reached that BH Equities would</p> <p>24 receive 6 percent of SE Multifamily after the</p> <p>25 return of the initial capital? Was that done</p>	<p>Page 38</p>	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 in 2018? I'm just trying to get a timeline.</p> <p>3 A. That was -- that was finalized in</p> <p>4 March of '19 formally.</p> <p>5 Q. Okay. So at the time in 2018 that</p> <p>6 BH Equities laid out the \$21 million, there not</p> <p>7 only had not been a written agreement, but</p> <p>8 there had not yet been an agreement as to the</p> <p>9 nature and extent of BH Equities' interest in</p> <p>10 SE Multifamily. Is that fair?</p> <p>11 MR. DOHERTY: Objection, form.</p> <p>12 You may answer, Mr. Thomas.</p> <p>13 A. I don't think that it's fair. There</p> <p>14 was multiple discussions and things like that.</p> <p>15 No written agreement is fair. But there was</p> <p>16 ongoing discussions trying to formalize things.</p> <p>17 Q. Okay. Let's turn our attention to</p> <p>18 HCRE. Do you know whether HCRE ever loaned any</p> <p>19 money to SE Multifamily?</p> <p>20 A. I don't believe they did.</p> <p>21 Q. Do you know if HCMLP ever loaned any</p> <p>22 money to SE Multifamily?</p> <p>23 A. Could I ask for clarification around</p> <p>24 the idea of "loan," just so we're on the same</p> <p>25 page there? For both HCRE and HCM. I just</p>	<p>Page 39</p>
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 want to make sure I'm answering the question</p> <p>3 you're asking here.</p> <p>4 Q. Sure. Like a loan like an IOU where</p> <p>5 you give someone money with the expectation</p> <p>6 that it would be returned with interest that's</p> <p>7 not -- that's not dependent on the outcome of</p> <p>8 the enterprise.</p> <p>9 A. No, I don't believe there were any</p> <p>10 loans provided by either party.</p> <p>11 Q. All right. Let's get to the LLC</p> <p>12 agreement itself.</p> <p>13 MR. MORRIS: If we can put that on</p> <p>14 the screen. We'll mark it as BH</p> <p>15 Exhibit 2.</p> <p>16 (Exhibit 2 marked.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. And you've seen this document before,</p> <p>19 right, sir?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And you've reviewed it in preparation</p> <p>22 for today's deposition, correct?</p> <p>23 A. I have.</p> <p>24 Q. All right.</p> <p>25 MR. MORRIS: If we could go to the</p>	<p>Page 40</p>	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 signature page.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you see that the document was</p> <p>5 signed on behalf of HCMLP and HCRE by James</p> <p>6 Dondero?</p> <p>7 A. I do.</p> <p>8 Q. Do you know who Mr. Dondero is?</p> <p>9 A. Yes.</p> <p>10 Q. And who do you understand Mr. Dondero</p> <p>11 to be?</p> <p>12 A. My understanding is he was a primary</p> <p>13 owner of both parties and a manager or</p> <p>14 executive in that capacity as well, you know,</p> <p>15 CEO type.</p> <p>16 Q. And what's the basis for that</p> <p>17 understanding?</p> <p>18 A. Just understanding of the parties',</p> <p>19 you know, business as -- you know, and our</p> <p>20 perspective as a partner.</p> <p>21 Q. Did anybody from Highland ever</p> <p>22 explain to you or anybody at BH Equities who</p> <p>23 Mr. Dondero was?</p> <p>24 A. Not specifically, no. But -- at</p> <p>25 least not to my understanding.</p>	<p>Page 41</p>

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. MORRIS: Can we scroll down to --</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you see that right there is the</p> <p>5 signature of Grant Scott, the director of</p> <p>6 Liberty CLO Holdco, Ltd.?</p> <p>7 A. I do.</p> <p>8 Q. Do you know who Mr. Scott is?</p> <p>9 A. I do not.</p> <p>10 Q. Did you ever speak with Mr. Scott?</p> <p>11 A. I don't believe so.</p> <p>12 Q. Do you know if anybody on behalf of</p> <p>13 BH Equities ever communicated with Mr. Scott in</p> <p>14 any way about this amended agreement?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Did you ever see any comments that</p> <p>17 were made on behalf of Liberty concerning this</p> <p>18 agreement?</p> <p>19 A. No.</p> <p>20 Q. Is it fair to say that there were</p> <p>21 various drafts of this agreement prepared</p> <p>22 before it was signed?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall when the first draft</p> <p>25 was prepared?</p>	Page 42	Page 43
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 by Highland?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall how many drafts of the</p> <p>5 agreement the parties went through?</p> <p>6 A. A specific number, no. A handful, to</p> <p>7 give it, you know, an order of magnitude, I</p> <p>8 guess.</p> <p>9 MR. MORRIS: Can we scroll to the</p> <p>10 next one, please?</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. There's the signature of Ben Roby.</p> <p>13 Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. That's the person that I think you</p> <p>16 identified earlier today as someone who was</p> <p>17 involved in Project Unicorn on behalf of</p> <p>18 BH Equities. Do I have that right?</p> <p>19 A. Correct.</p> <p>20 Q. And I apologize if you testified to</p> <p>21 this earlier, but can you remind me, then, of</p> <p>22 what role Mr. Roby played within BH Equities?</p> <p>23 A. At the time he was an acquisition</p> <p>24 manager focused on acquiring properties in</p> <p>25 which we made investments.</p>	Page 44	Page 45

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 signed it.</p> <p>3 Q. Okay. Before signing -- before</p> <p>4 BH Equities signed the amended agreement, did</p> <p>5 BH Equities take steps to make sure that the</p> <p>6 document reflected BH Equities' intent?</p> <p>7 A. Yes.</p> <p>8 Q. At the time BH Equities signed the</p> <p>9 amended agreement, did BH Equities believe that</p> <p>10 the amended agreement was consistent with BH</p> <p>11 Equities' intent?</p> <p>12 A. We were prepared to abide by the</p> <p>13 agreement as written. There were certain</p> <p>14 pieces we hoped to maybe further negotiate, but</p> <p>15 we understood the agreement and the economic</p> <p>16 relationship at the time.</p> <p>17 Q. Is there anything about the amended</p> <p>18 agreement that BH Equities believed was</p> <p>19 inconsistent with its intent at the time it</p> <p>20 signed the document?</p> <p>21 MR. DOHERTY: Objection, form.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. You can answer.</p> <p>24 A. Yeah. I struggle with the word</p> <p>25 "intent." There were certain parts we didn't</p>	Page 46	Page 47
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Can you clarify if we're talking</p> <p>3 about HCMLP, as we talked about the -- as the</p> <p>4 bilateral, yes, there would have been e-mail</p> <p>5 communication that we had hoped to have a</p> <p>6 larger residual interest than 6 percent.</p> <p>7 Q. Okay. And notwithstanding that hope,</p> <p>8 BH Equities nevertheless entered into this</p> <p>9 agreement with their eyes open, right? They</p> <p>10 understood that they were getting a 6 percent</p> <p>11 residual interest that could only be changed if</p> <p>12 the parties agreed in the future to amend the</p> <p>13 agreement, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Is there any other piece of</p> <p>16 amended agreement that BH Equities hoped to</p> <p>17 change in the future?</p> <p>18 MR. DOHERTY: Objection, form.</p> <p>19 And I want to, again, Mr. Thomas, if</p> <p>20 it involves legal analysis --</p> <p>21 MR. MORRIS: Withdrawn. That's fair.</p> <p>22 I'll rephrase the question, Casey.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Is there any other issue that</p> <p>25 BH Equities told Highland that it wasn't happy</p>	Page 48	Page 49

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. MORRIS: I'll rephrase the</p> <p>3 question.</p> <p>4 MR. DOHERTY: Okay.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. At any time prior to the -- to March</p> <p>7 15th, did anybody acting on behalf of Highland</p> <p>8 inform BH Equities that it believed any aspect</p> <p>9 of the amended agreement was inconsistent with</p> <p>10 Highland's intent?</p> <p>11 A. Not that I'm aware.</p> <p>12 MR. MORRIS: Hey, Casey, you were</p> <p>13 spot on. Thank you. That was a better</p> <p>14 question.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. At the time BH Equities signed the</p> <p>17 amended agreement, did BH Equities have any</p> <p>18 reason to believe that the amended agreement</p> <p>19 contained any errors or mistakes?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. Was BH Equities aware of any error or</p> <p>22 mistake in the amended agreement at the time it</p> <p>23 signed it?</p> <p>24 A. No. Not related to anything that we</p> <p>25 were focused on.</p>	Page 50	Page 51
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 complete or accurate, just let me know, okay?</p> <p>3 A. Okay.</p> <p>4 Q. All right. So this is Schedule A to</p> <p>5 the amended agreement. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And you've seen this page before,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And this page shows that Highland</p> <p>11 Capital Management, L.P. made a capital</p> <p>12 contribution of \$49,000. Do I have that right?</p> <p>13 A. Yes.</p> <p>14 Q. And it also shows that Highland</p> <p>15 Capital Management, L.P. had a 46.06 percentage</p> <p>16 interest in SE Multifamily, correct?</p> <p>17 A. Yes, that's what it says.</p> <p>18 Q. Okay. And those facts were known to</p> <p>19 BH Equities at or before the time it signed</p> <p>20 this amended agreement, correct?</p> <p>21 A. Correct.</p> <p>22 Q. In fact, BH Equities agreed that</p> <p>23 HCMLP would hold a 46.06 percentage interest in</p> <p>24 SE Multifamily while making a capital</p> <p>25 contribution of \$49,000, correct?</p>	Page 52	Page 53

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      A. Yes, that was the deal as we</p> <p>3      understood it.</p> <p>4      Q. Okay. And is it fair to say that at</p> <p>5      the time the amended agreement was executed,</p> <p>6      that BH Equities believed Schedule A accurately</p> <p>7      reflected the intent of the parties?</p> <p>8      A. Yes.</p> <p>9      Q. Again, flip side, before signing the</p> <p>10     agreement, did BH Equities have any reason to</p> <p>11     believe that Schedule A did not accurately</p> <p>12     reflect the intent of the parties?</p> <p>13     A. No.</p> <p>14     Q. Prior to signing this agreement, did</p> <p>15     BH Equities ever hear from anybody acting on</p> <p>16     behalf of Highland that Highland believed</p> <p>17     Schedule A was inaccurate in any way?</p> <p>18     A. Using Highland as the counterparty</p> <p>19     that we were working with, no, we did not.</p> <p>20     Q. I'm going to -- I'm going to now ask</p> <p>21     about each of the component members, because I</p> <p>22     want to make sure that we're clear here.</p> <p>23     Prior to the time that BH Equities</p> <p>24     signed the amended agreement, did anybody</p> <p>25     acting on behalf of HCRE tell BH Equities that</p>	<p>Page 54</p>	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      they believed Schedule A was wrong in any way?</p> <p>3      A. I don't know that I can say that</p> <p>4      affirmatively, as it wasn't -- again, with us</p> <p>5      it was very much a bilateral. We knew there</p> <p>6      were two counterparties outside of BH,</p> <p>7      excluding Liberty, from that discussion. We</p> <p>8      didn't exactly know the roles clearly as to who</p> <p>9      was responsible for what parties' interests</p> <p>10     other than BH's was very clear and there was a</p> <p>11     related party of Highland, HCRE, as well.</p> <p>12     Q. All right. Let me ask a different</p> <p>13     question, then. Prior to the time that</p> <p>14     BH Equities signed the amended agreement, did</p> <p>15     anybody acting on behalf of any of the other</p> <p>16     members of SE Multifamily inform BH Equities</p> <p>17     that they believed there was an error in</p> <p>18     Schedule A?</p> <p>19     A. Not to my knowledge.</p> <p>20     Q. Thank you. The percentage interests</p> <p>21     that are reflected in Schedule A were used</p> <p>22     elsewhere in the amended agreement; is that</p> <p>23     correct?</p> <p>24     MR. DOHERTY: Objection. If</p> <p>25     there's -- objection, form.</p>	<p>Page 55</p>
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      A. I'd have to look through the document</p> <p>3      or search it.</p> <p>4      BY MR. MORRIS:</p> <p>5      Q. Okay. So let's go to Section 1.7.</p> <p>6      Do you see 1.7 is entitled "Company Ownership"?</p> <p>7      A. Yes, I see that.</p> <p>8      Q. And am I reading it correctly that</p> <p>9      the percentages set forth in Section 1.7 match</p> <p>10     exactly with the percentage interest set forth</p> <p>11     on Schedule A?</p> <p>12     A. Yes.</p> <p>13     Q. And was it, from BH Equities'</p> <p>14     perspective, the parties' intent that the</p> <p>15     company ownership percentages set forth in 1.7</p> <p>16     would match the percentage interests set forth</p> <p>17     in Schedule A?</p> <p>18     MR. DOHERTY: Objection. Form.</p> <p>19     Objection, form. I need to say objection,</p> <p>20     form. Sorry.</p> <p>21     BY MR. MORRIS:</p> <p>22     Q. You can answer.</p> <p>23     A. It -- I believe it makes sense,</p> <p>24     without further -- again, I've read the</p> <p>25     document. I don't recall specifically what 1.7</p>	<p>Page 56</p>	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      governs, if it governs anything in particular.</p> <p>3      But as written, the numbers match up, and we</p> <p>4      didn't have an issue with this specific clause</p> <p>5      at the time of signing.</p> <p>6      Q. And this is the clause that</p> <p>7      specifically identifies what ownership interest</p> <p>8      each member shall have in SE Multifamily. Am I</p> <p>9      reading that fairly?</p> <p>10     A. Yes, with respect -- and I think it</p> <p>11     has to give deference to the waterfall</p> <p>12     provisions and distribution provisions later in</p> <p>13     the agreement.</p> <p>14     Q. Okay. So subject to the waterfall</p> <p>15     and distribution provisions, would you agree</p> <p>16     that Section 1.7 was intended to identify the</p> <p>17     ownership interest of each of the members of SE</p> <p>18     Multifamily?</p> <p>19     A. I believe so, yes.</p> <p>20     Q. Okay. Can we go to Section 6.1,</p> <p>21     please? Do you see there's --</p> <p>22     MR. DOHERTY: John, I could use a</p> <p>23     break in a few minutes, but I can wait. I</p> <p>24     just didn't know for a break point if you</p> <p>25     could take it. But if you want to keep on</p>	<p>Page 57</p>

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 going, that's fine.</p> <p>3 MR. MORRIS: Casey, if you could just</p> <p>4 hold on, I've just got two more provisions</p> <p>5 and then we'll take a break.</p> <p>6 MR. DOHERTY: Sure. No problem. I</p> <p>7 just wanted to flag it.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Section 6.1(a), do you see that, sir?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And that provision deals with</p> <p>12 the distribution of distributable cash as</p> <p>13 defined, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And subject to Article VI and</p> <p>16 Article IX, distributable cash is going to be</p> <p>17 distributable in the same percentages as the</p> <p>18 percentage interests set forth in Schedule A,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And that's -- that's what the parties</p> <p>22 intended when they wrote this provision and</p> <p>23 agreed to it, correct?</p> <p>24 A. That's what we agreed to, yes.</p> <p>25 MR. MORRIS: Okay. Can we go to</p>	Page 58	Page 59
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 back at 12:10?</p> <p>3 MR. DOHERTY: We can go off of the</p> <p>4 record, too. I'm fine with that. I know</p> <p>5 it's getting around -- I'm good on</p> <p>6 lunchtime. I don't know how much time, if</p> <p>7 you want to talk, John, me and you after,</p> <p>8 but I'm fine to come back in five minutes</p> <p>9 from break.</p> <p>10 MR. MORRIS: Okay. 12:10. Seven</p> <p>11 minutes. Thank you.</p> <p>12 MR. DOHERTY: Okay.</p> <p>13 (Recess taken 11:03 a.m. Central Time</p> <p>14 - 11:12 Central Time.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Let's go back to Schedule A, please.</p> <p>17 Mr. Thomas, can you hear me okay?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Before signing this amended</p> <p>20 agreement, did BH Equities ever raise any</p> <p>21 concerns with Highland about HCMLP receiving a</p> <p>22 46.06 percentage interest while putting in</p> <p>23 capital of \$49,000?</p> <p>24 A. I don't recall any specific concerns.</p> <p>25 Q. In fact, it was acceptable to</p>	Page 60	Page 61

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      A. I don't believe we did.</p> <p>3      Q. Did BH Equities ever speak with</p> <p>4      Highland about why HCMLP was participating in</p> <p>5      this transaction?</p> <p>6      A. Not to my knowledge.</p> <p>7      Q. Did BH Equities ever ask Highland why</p> <p>8      HCMLP was obtaining a 46.06 percent interest?</p> <p>9      A. I don't recall that we did.</p> <p>10     Q. So this was -- Schedule A was</p> <p>11     something that BH Equities knew about and</p> <p>12     agreed to at the time it signed this agreement.</p> <p>13     Fair?</p> <p>14     A. Yes.</p> <p>15     Q. Okay. Let's go to Section 6.4(a) on</p> <p>16     page 12, please. Okay. Do you see in Section</p> <p>17     6.4(a), there's a -- well, 6.4 deals with</p> <p>18     allocations of profits and losses.</p> <p>19     Do you see that?</p> <p>20     A. Yes.</p> <p>21     Q. In Section 6.4(a), the parties agreed</p> <p>22     that except as provided in that section, 94</p> <p>23     percent of SE Multifamily's profits and losses</p> <p>24     would be allocated to HCMLP; is that fair?</p> <p>25     A. Yes.</p>	Page 62	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Q. Was this allocation the subject of</p> <p>3      any negotiation?</p> <p>4      MR. DOHERTY: Objection, form.</p> <p>5      MR. MORRIS: Withdrawn.</p> <p>6      BY MR. MORRIS:</p> <p>7      Q. Was the allocation of 94 percent to</p> <p>8      6 percent for BH Equities on profits and losses</p> <p>9      the subject of any negotiation?</p> <p>10     A. It was on a phone call between myself</p> <p>11     and Mr. Broaddus, it came up as it, you know,</p> <p>12     wasn't exactly normal. But it was an issue</p> <p>13     that, you know, was kind of internal, so it</p> <p>14     wasn't broadly negotiated past or those things,</p> <p>15     as we were, again, somewhat indifferent.</p> <p>16     Q. And what does it mean that it was not</p> <p>17     exactly normal?</p> <p>18     A. Normally the allocation of profit and</p> <p>19     losses would also follow an allocation -- the</p> <p>20     waterfall allocation or those things more</p> <p>21     closely.</p> <p>22     Q. And did Mr. Broaddus provide any</p> <p>23     explanation as to why Highland wasn't following</p> <p>24     that course that you just described?</p> <p>25     A. Not in any -- not in detail.</p>	Page 63
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Q. Did he describe any reason for</p> <p>3      allocating 94 percent of SE Multifamily's</p> <p>4      profits and losses to HCMLP?</p> <p>5      A. No.</p> <p>6      Q. Am I correct that under the terms of</p> <p>7      the amended agreement, none of SE Multifamily's</p> <p>8      profits and losses would be allocated to HCMLP,</p> <p>9      correct?</p> <p>10     A. That's correct.</p> <p>11     Q. Did BH Equities ask Highland why none</p> <p>12     of the profits and losses were being allocated</p> <p>13     to HCMLP?</p> <p>14     A. I don't believe so.</p> <p>15     Q. Did anybody acting on behalf of any</p> <p>16     of the other members ever discuss with</p> <p>17     BH Equities why HCMLP was not being allocated</p> <p>18     any of SE Multifamily's profits or losses?</p> <p>19     A. I don't believe so.</p> <p>20     Q. To the best of -- withdrawn.</p> <p>21     To the best of BH Equities'</p> <p>22     knowledge, does paragraph 6.4(a) accurately</p> <p>23     reflect the parties' intent?</p> <p>24     A. To the best of our knowledge, yes.</p> <p>25     Q. Did anybody acting on behalf of any</p>	Page 64	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      member to the SEM amended agreement ever inform</p> <p>3      BH Equities that Section 6.4(a) was incorrect</p> <p>4      in any way?</p> <p>5      A. I don't believe so.</p> <p>6      Q. Do you know if the amended agreement</p> <p>7      that we're looking at was ever amended for any</p> <p>8      reason at any time?</p> <p>9      A. There was a slip page at some</p> <p>10     point -- and I believe it was after this --</p> <p>11     just to update capital. But it was a</p> <p>12     nonsubstantial update.</p> <p>13     Q. I think we'll get to that in a few</p> <p>14     minutes.</p> <p>15     Other than the slip page that you</p> <p>16     just described, is BH Equities aware of any</p> <p>17     amendment to the amended agreement as we've</p> <p>18     defined it here today?</p> <p>19     A. No.</p> <p>20     Q. BH Equities never signed an amendment</p> <p>21     to the amended agreement, correct?</p> <p>22     A. Correct.</p> <p>23     Q. And BH Equities was never informed by</p> <p>24     anybody acting on behalf of HCMLP or any of the</p> <p>25     other members to the agreement that the amended</p>	Page 65

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 agreement had been amended, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Did BH Equities ever receive in</p> <p>5 writing any draft agreement to the amended</p> <p>6 agreement?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did -- after the time that this</p> <p>9 agreement was executed, did BH Equities ever</p> <p>10 discuss with any member whether this amended</p> <p>11 agreement would be further amended?</p> <p>12 A. Yes.</p> <p>13 Q. Can you describe for me when those</p> <p>14 conversations take place or communications took</p> <p>15 place?</p> <p>16 A. Sure. There was e-mails expressing</p> <p>17 our desire to amend our 6 percent amount, right</p> <p>18 around the time of signing and a couple of</p> <p>19 times thereafter. I don't remember specific</p> <p>20 dates.</p> <p>21 So, you know, starting in March of --</p> <p>22 of '19 and then occasionally thereafter, we</p> <p>23 expressed a desire to expand our 6 percent</p> <p>24 number.</p> <p>25 Q. And what was BH -- what did Highland</p>	Page 66	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 say in response?</p> <p>3 A. I believe in the e-mail</p> <p>4 correspondence it said something along the</p> <p>5 lines of there may be future amendments needed</p> <p>6 or something along that line.</p> <p>7 Q. But it never happened; is that fair?</p> <p>8 A. That is fair.</p> <p>9 Q. And is it also fair that any</p> <p>10 discussion of any amendment that BH Equities is</p> <p>11 aware of would be reflected in the e-mails that</p> <p>12 BH Equities produced in response to the</p> <p>13 subpoena?</p> <p>14 A. Could you reask the question? I just</p> <p>15 want to make sure I answer it correctly.</p> <p>16 Q. Sure. Are the communications</p> <p>17 concerning a possible amendment to the amended</p> <p>18 agreement reflected in the e-mails that</p> <p>19 BH Equities produced in response to the</p> <p>20 subpoena?</p> <p>21 A. Yes.</p> <p>22 Q. Are you aware of any communications</p> <p>23 concerning a possible amendment that are not</p> <p>24 reflected in the e-mails that BH Equities</p> <p>25 produced in response to the subpoena?</p>	Page 67
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. I am not.</p> <p>3 Q. Let's -- let's start to look at some</p> <p>4 other documents.</p> <p>5 (Exhibit 3 marked.)</p> <p>6 MR. MORRIS: Let's put up on the</p> <p>7 screen what we've marked as Exhibit 3.</p> <p>8 And so we're going to go back in time a</p> <p>9 little bit to prior to the execution of</p> <p>10 the agreement.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. And I'm directing your attention to a</p> <p>13 document that's been marked, if we could look</p> <p>14 at the bottom, Bates stamp BH 92. I'm going to</p> <p>15 skip the zeros.</p> <p>16 MR. DOHERTY: Mr. Morris, with</p> <p>17 e-mails, I always like to, you know, if</p> <p>18 possible, have it so I can start reading</p> <p>19 from the bottom of the conversation. Will</p> <p>20 these be put in the chat as where we're</p> <p>21 going?</p> <p>22 MR. MORRIS: Oh, yeah, we'll put it</p> <p>23 in the chat.</p> <p>24 MR. DOHERTY: Okay.</p> <p>25 MR. MORRIS: I don't think there's</p>	Page 68	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 anything below what I'm asking about, but</p> <p>3 can you scroll --</p> <p>4 MS. CANTY: It's in there now.</p> <p>5 MR. DOHERTY: These virtual</p> <p>6 depositions, I know it's -- you go to the</p> <p>7 top, you don't have context. So I just</p> <p>8 wanted to -- I'll let you go. Thank you.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. So do you see -- if we could just put</p> <p>11 this whole e-mail up on the screen right there.</p> <p>12 Okay. It's an e-mail from Mr. Roby to Matt</p> <p>13 McGraner, do you see that, from October 7,</p> <p>14 2018?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. We talked -- I think you</p> <p>17 mentioned or maybe I mentioned Mr. McGraner</p> <p>18 earlier. Do you have an understanding as to</p> <p>19 whose interest Mr. McGraner was representing in</p> <p>20 these communications?</p> <p>21 A. We would have viewed them as -- or</p> <p>22 Matt as representing kind of the broader -- you</p> <p>23 know, again, we viewed it as a bilateral</p> <p>24 negotiation, so BH -- and then I'm going to use</p> <p>25 air quotes again -- Highland broadly, the other</p>	Page 69

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 two parties. You know, I don't specifically</p> <p>3 know which of those two parties, but -- that he</p> <p>4 was representing, the other party to the</p> <p>5 agreement.</p> <p>6 Q. Okay. I'm focused on the chart with</p> <p>7 the sentence above it, but, again, you should</p> <p>8 read whatever you want of the e-mail for</p> <p>9 context. My question for you, the first</p> <p>10 question is, do you know what that chart is in</p> <p>11 the middle of the page under the word "Cash"?</p> <p>12 A. Yes.</p> <p>13 Q. And what's your understanding of what</p> <p>14 this chart depicts?</p> <p>15 A. It is depicting the sources of the</p> <p>16 capitalization for SE Multifamily Holdings.</p> <p>17 Q. And so is this a proposal that's</p> <p>18 being made by BH Equities, or is this a summary</p> <p>19 of discussions that have been taking place, if</p> <p>20 you know?</p> <p>21 A. A little of both.</p> <p>22 Q. Okay. And I see that there's a</p> <p>23 reference to Highland there on the left. Do</p> <p>24 you see that? Is that -- do you know what that</p> <p>25 refers to?</p>	Page 70	Page 71
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. MORRIS: And if we could scroll</p> <p>3 up just to see Mr. Broaddus's response.</p> <p>4 BY MR. MORRIS</p> <p>5 Q. Mr. Broaddus again was acting on</p> <p>6 behalf of Highland. Do I have that right?</p> <p>7 MR. DOHERTY: Objection. I know we</p> <p>8 have some kind of defined terms for the</p> <p>9 deposition, but I just want to --</p> <p>10 objection, form.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Based on the prior testimony, you can</p> <p>13 answer, sir.</p> <p>14 A. He was acting on behalf of what we</p> <p>15 viewed as the Highland, you know, broad entity.</p> <p>16 So we didn't know specifically HCMLP or HCRE in</p> <p>17 particular. But as a counterparty to the</p> <p>18 broader Highland, you know, ecosystem, yes.</p> <p>19 Q. Okay. Can you just -- can you just</p> <p>20 read Mr. Broaddus's e-mail to yourself and tell</p> <p>21 me when you're finished?</p> <p>22 A. I've finished.</p> <p>23 Q. Okay. Do you know if anybody ever</p> <p>24 told KeyBank that the SE Multifamily, LLC</p> <p>25 agreement that was in existence at that time</p>	Page 72	Page 73

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 original LLC agreement was amended to, quote,</p> <p>3 reflect whatever the deal terms were?</p> <p>4 A. I think that's fair.</p> <p>5 MR. MORRIS: Let's go to the next</p> <p>6 document, Exhibit 5, which has Bates</p> <p>7 number BH 1271 to -73.</p> <p>8 (Exhibit 5 marked.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Before I ask you any questions about</p> <p>11 this document, the agreement was dated</p> <p>12 March 15th, 2019. Do you remember that?</p> <p>13 A. Yes.</p> <p>14 Q. And was there a sense of urgency to</p> <p>15 get the agreement signed by the end of that</p> <p>16 particular day?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have an understanding as to</p> <p>19 what the cause of that urgency was?</p> <p>20 A. My understanding from the</p> <p>21 correspondence of March 15th is the deadline to</p> <p>22 either file or extend taxes for pass-through</p> <p>23 entities, and that was driving the urgency.</p> <p>24 Q. And was the goal to make the</p> <p>25 agreement effective as of August 23rd, 2018,</p>	Page 74	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 the date on which the original LLC agreement</p> <p>3 was entered into?</p> <p>4 A. Yes.</p> <p>5 Q. And is it BH Equities' understanding</p> <p>6 that in order to make the amended and restated</p> <p>7 agreement retroactive to August 23rd, 2018, it</p> <p>8 had to be signed by the end of the day on March</p> <p>9 15, 2019?</p> <p>10 MR. DOHERTY: Objection -- withdraw</p> <p>11 my statement.</p> <p>12 A. I'm not an expert in that matter, but</p> <p>13 that would certainly be the understanding we</p> <p>14 were given.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Okay. I appreciate the distinction.</p> <p>17 Was BH Equities told by Highland that the</p> <p>18 agreement had to be executed on or before March</p> <p>19 15th in order for it to be retroactive to</p> <p>20 August 2018?</p> <p>21 A. Yes. That was the -- what we were</p> <p>22 told.</p> <p>23 Q. Okay. So let's take a look at the</p> <p>24 e-mail that's up on the screen. You'll see</p> <p>25 there's actually two e-mails. The one on the</p>	Page 75
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 bottom is from Mr. Broaddus to you and to</p> <p>3 Mr. Roby with a copy to Mr. McGraner, and it's</p> <p>4 sent on March 14th. Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do you recall -- I think you may</p> <p>7 have testified to this earlier, but does this</p> <p>8 refresh your recollection that BH Equities was</p> <p>9 presented with a draft amended LLC agreement</p> <p>10 for SE Multifamily on March 14th?</p> <p>11 A. Yes.</p> <p>12 Q. And do you see in the</p> <p>13 next-to-the-last paragraph in Mr. Broaddus'</p> <p>14 first e-mail there, he says, quote, the</p> <p>15 contribution schedule in the attached needs to</p> <p>16 be updated with the actual contribution</p> <p>17 numbers. I have an updated version I can send</p> <p>18 in a separate e-mail.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. So were the actual contribution</p> <p>22 numbers and the contribution schedule a subject</p> <p>23 of discussion between BH Equities and Highland</p> <p>24 prior to the execution of the amended</p> <p>25 agreement?</p>	Page 76	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Yes.</p> <p>3 Q. And then you can see the e-mail</p> <p>4 above, and Mr. Broaddus follows up and he says,</p> <p>5 among other things, quote, "Contribution</p> <p>6 schedule attached." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And if we can scroll to the next</p> <p>9 page, the next page actually has Schedule A</p> <p>10 attached. If we could scroll down. I don't</p> <p>11 know if you can see it in the chat room because</p> <p>12 I don't want you to just take my word for it.</p> <p>13 But do you recall receiving a Schedule A from</p> <p>14 Mr. Broaddus prior to the execution of the</p> <p>15 agreement?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is this the schedule that</p> <p>18 Highland prepared and delivered to BH Equities</p> <p>19 prior to the execution of the amended</p> <p>20 agreement?</p> <p>21 A. I believe so.</p> <p>22 Q. And is it BH Equities' understanding</p> <p>23 that somebody acting on behalf of Highland</p> <p>24 completed Schedule A before delivering it to</p> <p>25 BH Equities?</p>	Page 77

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Yes, that was our understanding.</p> <p>3 Q. Okay. BH Equities didn't prepare the</p> <p>4 numbers that are set forth on Schedule A, did</p> <p>5 it?</p> <p>6 A. No.</p> <p>7 Q. That was Highland, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And Highland delivered this document</p> <p>10 to BH Equities the day before the agreement</p> <p>11 was -- withdrawn. Actually, delivered it to BH</p> <p>12 Equities on March 15, 2019, correct?</p> <p>13 A. This particular Schedule A, yes, was</p> <p>14 delivered on March 15th.</p> <p>15 Q. And it was delivered as a stand-alone</p> <p>16 document by itself with nothing else; is that</p> <p>17 right?</p> <p>18 A. That's my recollection, based on -- I</p> <p>19 believe so without, you know, seeing some other</p> <p>20 sourcing.</p> <p>21 THE REPORTER: I'm sorry,</p> <p>22 Mr. Doherty, did you say something?</p> <p>23 MR. DOHERTY: Objection. Well,</p> <p>24 objection that -- John, may I make a</p> <p>25 comment?</p>	Page 78	Page 79
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 BH Equities has Bates stamped these documents</p> <p>3 consecutively 1271, 1272, and 1273?</p> <p>4 A. Yes.</p> <p>5 Q. And do you see that Mr. Broaddus's</p> <p>6 e-mail at the very first page shows that</p> <p>7 there's an attachment?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: Can we go up to the</p> <p>10 first page, please?</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. And do you see that Mr. Broaddus's</p> <p>13 first sentence says attached is the</p> <p>14 contribution schedule, at least in substance?</p> <p>15 A. Yes.</p> <p>16 Q. And do you have any reason to believe</p> <p>17 that the Schedule A that we just looked at is</p> <p>18 not the contribution schedule that Mr. Broaddus</p> <p>19 attached to his e-mail on March 15, 2019, at</p> <p>20 2:02 p.m.?</p> <p>21 A. No, I do not. I believe that is the</p> <p>22 schedule.</p> <p>23 (Exhibit 6 marked.)</p> <p>24 Q. Okay. So let's go, then, to</p> <p>25 Exhibit 6, which is a document Bates numbered</p>	Page 80	Page 81

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 I'm just -- it gives me a bigger screen to view</p> <p>3 it.</p> <p>4 Q. Okay. So that's the attachment that</p> <p>5 you sent, right?</p> <p>6 A. Yes.</p> <p>7 Q. And your attachment deals with the</p> <p>8 very issue that you identified earlier today</p> <p>9 that you were focused on, and that was the</p> <p>10 waterfall; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And in the first sentence when</p> <p>13 you say that, "Attached is what we proposed in</p> <p>14 October to try and handle this," this is</p> <p>15 expressly referring to the waterfall provision,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you go on to say, "This</p> <p>19 covers the distribution language in a way that</p> <p>20 we can get comfortable with, as we need to make</p> <p>21 sure that if the capital that Highland put in</p> <p>22 associated with debt is off, that it's not</p> <p>23 dilutive."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	Page 82	Page 83
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 where we were kind of indifferent.</p> <p>3 Q. And what needs did Mr. Broaddus</p> <p>4 describe for you?</p> <p>5 MR. DOHERTY: Objection.</p> <p>6 MR. MORRIS: Withdrawn.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Did Mr. Broaddus describe for you the</p> <p>9 needs that Highland had with respect to the</p> <p>10 allocation of taxable income and loss?</p> <p>11 A. Not in any level of detail.</p> <p>12 Q. So when you said that you believed</p> <p>13 your provision would meet their needs, how did</p> <p>14 you believe their provision would meet</p> <p>15 Highland's needs?</p> <p>16 A. The provision that we shared was</p> <p>17 focused more on the distribution of cash and</p> <p>18 not the allocation of profits and losses.</p> <p>19 Q. And is that because Section 6.1 deals</p> <p>20 with the allocation of cash and Section 6.4</p> <p>21 deals with the allocation of profits and</p> <p>22 losses?</p> <p>23 A. Could you show me Section 6.4, just</p> <p>24 to verify the numbers? But, yes, 6.1 was</p> <p>25 focused exclusively on the allocation of cash</p>	Page 84	Page 85

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Is what you're saying there that</p> <p>3 Highland was going to put in approximately --</p> <p>4 withdrawn.</p> <p>5 Is what you're saying there that</p> <p>6 Highland was going to get credit for having put</p> <p>7 in \$290 million or thereabouts into SE</p> <p>8 Multifamily, 250 million of which was coming</p> <p>9 from the KeyBank loan and the other 40 million</p> <p>10 of which was coming from Highland?</p> <p>11 A. Yes, that's the distinction I was</p> <p>12 trying to make.</p> <p>13 Q. Okay. And under the waterfall is it</p> <p>14 BH Equities' understanding that it agreed that</p> <p>15 the \$250 million that had been borrowed from</p> <p>16 KeyBank would be paid back first?</p> <p>17 A. Yes.</p> <p>18 Q. Before return of capital?</p> <p>19 A. Yes.</p> <p>20 Q. Does BH Equities know the source of</p> <p>21 funding for the other \$40 million?</p> <p>22 A. No, not at this time.</p> <p>23 Q. Did BH Equities ever ask Highland</p> <p>24 where the \$40 million was coming from?</p> <p>25 A. No, not that I -- not that I'm aware.</p>	Page 86	Page 87
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 partnerships with Highland broadly, you know,</p> <p>3 whether that be HCIRE, HCMLP, the NexPoint RE,</p> <p>4 et cetera, to the tune of 40-plus property</p> <p>5 partnerships, et cetera. So we had significant</p> <p>6 relations with them and still do on the</p> <p>7 management company side. So I don't</p> <p>8 specifically know what entities were owned or</p> <p>9 related to what, but we had significant prior</p> <p>10 experience with the parties involved.</p> <p>11 Q. And were -- were Mr. McGraner or</p> <p>12 Mr. Broaddus or Mr. Chang involved in any of</p> <p>13 those other deals?</p> <p>14 A. Yes.</p> <p>15 Q. Were they the primary contacts that</p> <p>16 BH Equities had for the transactions that</p> <p>17 BH Equities did with Highland and its</p> <p>18 affiliated and related entities?</p> <p>19 A. I believe so, yes.</p> <p>20 (Exhibit 7 marked.)</p> <p>21 Q. Let's go to Exhibit 7, please, which</p> <p>22 is a two-page e-mail with Bates number 1437 to</p> <p>23 -38. And if we could start at the bottom,</p> <p>24 you'll see -- this is the e-mail that we just</p> <p>25 looked at from you, right?</p>	Page 88	Page 89

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. DOHERTY: Objection. Could I see</p> <p>3 the -- could we zoom out so I can see that</p> <p>4 whole e-mail? Do y'all mind?</p> <p>5 MR. MORRIS: Sure. Yep.</p> <p>6 MR. DOHERTY: Okay. Not really an</p> <p>7 objection but a request .</p> <p>8 I think There's an (e). And maybe</p> <p>9 it's not. Could you scroll down just so I</p> <p>10 can see the (e)?</p> <p>11 MR. MORRIS: It's at the bottom of</p> <p>12 the page there.</p> <p>13 MR. DOHERTY: I'm sorry to be</p> <p>14 annoying. I just wanted to see it. While</p> <p>15 we were talking about it, I didn't know if</p> <p>16 we could zoom out so we could have the</p> <p>17 whole --</p> <p>18 THE WITNESS: Yeah, I can see it. I</p> <p>19 can see the provision (e), Casey.</p> <p>20 MR. DOHERTY: Okay. Then I'm okay.</p> <p>21 I was more talking for you, Dusty. I</p> <p>22 wanted everybody to be able to see the</p> <p>23 document. Okay. Sounds good.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Just let me try to clean this up a</p>	Page 90	Page 91
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And did Mr. Chang's section -- and</p> <p>4 what's on Mr. Chang's e-mail, is it your</p> <p>5 understanding that it ultimately became Section</p> <p>6 6.1 of the amended agreement? And, again, I'm</p> <p>7 happy to pull it up if you'd like because I</p> <p>8 don't mean to test you.</p> <p>9 A. Yeah, if you wouldn't mind pulling it</p> <p>10 up, that would be great.</p> <p>11 Q. Let's do that. Let's pull it up.</p> <p>12 It's Exhibit 2. If we can pull up 6.1.</p> <p>13 MR. DOHERTY: Mr. Morris, do you</p> <p>14 think it would be helpful for Mr. Thomas</p> <p>15 to print out the amended agreement during</p> <p>16 this series of questions, or is this kind</p> <p>17 of a one-off question?</p> <p>18 MR. MORRIS: I think it's a one-off</p> <p>19 question.</p> <p>20 MR. DOHERTY: Okay.</p> <p>21 MR. MORRIS: But if he wants to do</p> <p>22 that, I don't mean to stop him.</p> <p>23 MR. DOHERTY: I understand.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Here's 6.1. You'll see that it's got</p>	Page 92	Page 93

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Yes.</p> <p>3 Q. That's the return of capital</p> <p>4 provision, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that's what BH Equities was</p> <p>7 concerned about, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And so Mr. Chang's proposal was</p> <p>10 acceptable to BH Equities, correct?</p> <p>11 A. Yes.</p> <p>12 Q. BH Equities accepted Mr. Chang's</p> <p>13 entire proposal with respect to Section 6.1,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: All right. If we can go</p> <p>18 to the next exhibit, Number 8, Bates</p> <p>19 number 1140.</p> <p>20 (Exhibit 8 marked.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. So we're still on the 15th.</p> <p>23 This was a busy day for you. At least it looks</p> <p>24 that way. It's now 11:20 at night.</p> <p>25 A. Uh-huh.</p>	Page 94	Page 95
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. That would be appreciated.</p> <p>3 Q. Yep. Okay. So you'll see that at</p> <p>4 9:24, you know, some version of the agreement,</p> <p>5 Mr. Roby sent it to himself. Do you see that</p> <p>6 at 9:24?</p> <p>7 A. Yes. Yes, sorry.</p> <p>8 Q. And if we can scroll up just a bit.</p> <p>9 It looks like -- it's not clear to whom</p> <p>10 Mr. Roby sent it to, but at 9:28, he had a</p> <p>11 signed agreement at that time. And he asked</p> <p>12 about working on a promote structure by the end</p> <p>13 of April. Do you see that?</p> <p>14 A. Uh-huh. Yes.</p> <p>15 Q. So do you recall that there were two</p> <p>16 different versions of the agreement that were</p> <p>17 signed, or is that the slip page that you were</p> <p>18 referring to earlier?</p> <p>19 A. I don't recall exactly --</p> <p>20 Q. Okay.</p> <p>21 A. -- where version control was at that</p> <p>22 point.</p> <p>23 Q. Okay. So somebody responds, "Thanks,</p> <p>24 Ben." It's hard to tell.</p> <p>25 MR. MORRIS: But keep scrolling up.</p>	Page 96	Page 97

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Yes, that's my understanding.</p> <p>3 Q. And so you or somebody acting on</p> <p>4 behalf of BH Equities was looking at Schedule A</p> <p>5 and noticed that the capital contribution</p> <p>6 amount was off by a little bit; is that fair?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And you brought that to</p> <p>9 Highland's attention, correct?</p> <p>10 A. Correct.</p> <p>11 Q. But BH Equities didn't identify</p> <p>12 anything else about Schedule A that appeared to</p> <p>13 be in error or by mistake at that time,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And let's -- let's just look to see.</p> <p>17 So you identify the error, and then you say,</p> <p>18 "As I understand it, several other items</p> <p>19 related to the agreement will get discussed and</p> <p>20 an amendment will be coming. Can we make that</p> <p>21 update at the time of the amendment?"</p> <p>22 Right? So it was BH Equities'</p> <p>23 expectation that there would be an amendment;</p> <p>24 is that right?</p> <p>25 A. Yes.</p>	<p>Page 98</p> <p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Q. And that amendment that BH Equities</p> <p>3 was hoping to have made was specifically</p> <p>4 limited to the question of whether the</p> <p>5 6 percent residual interest would be increased;</p> <p>6 is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And is that -- was the promote</p> <p>9 an attempt to get value through another means,</p> <p>10 or is that related to the desire to get the</p> <p>11 6 percent increase?</p> <p>12 A. They were one and the same.</p> <p>13 Q. Oh, okay. So -- so the amendment</p> <p>14 that -- this is what you were referring to</p> <p>15 earlier, right, that BH Equities agreed to</p> <p>16 accept the 6 percent residual interest with the</p> <p>17 hope and expectation that there would be an</p> <p>18 amendment that would increase that amount,</p> <p>19 right?</p> <p>20 A. Right.</p> <p>21 Q. And that's the only issue that BH</p> <p>22 Equities wanted changed in the amended</p> <p>23 agreement, correct?</p> <p>24 MR. DOHERTY: Objection.</p> <p>25</p>	<p>Page 99</p>
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. You can answer.</p> <p>4 A. The only issue that I was aware of.</p> <p>5 Again, I'm focused more on the economics,</p> <p>6 though.</p> <p>7 Q. Okay. Not -- there is no other</p> <p>8 provision of the amended agreement that BH</p> <p>9 Equities ever asked Highland to change except</p> <p>10 for that number 6. Fair?</p> <p>11 A. That's my understanding.</p> <p>12 Q. So let's see what Mr. Broaddus says</p> <p>13 in response. Okay. Right there. And he</p> <p>14 suggests the slip page. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And he asks a question of Kim and</p> <p>17 Matt at the bottom about whether the increase</p> <p>18 in BH Equities' capital contribution would</p> <p>19 change Highland's contribution or would it be</p> <p>20 just additional capital to BH only. Do you see</p> <p>21 that?</p> <p>22 A. Yes.</p> <p>23 Q. And the answer to that question was</p> <p>24 that it was only going to change the capital</p> <p>25 contribution made by BH Equities, correct?</p>	<p>Page 100</p> <p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. I believe so, yes.</p> <p>3 Q. BH Equities wasn't intending to</p> <p>4 change the capital contribution of any of the</p> <p>5 Highland parties, correct?</p> <p>6 A. No.</p> <p>7 Q. And then -- and then Mr. Chang</p> <p>8 weighed in in response and said that, you know,</p> <p>9 quote, we are fine handling this with a slip</p> <p>10 page if BH Equities, closed quote, is fine with</p> <p>11 that. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And then Mr. Broaddus responds to</p> <p>14 that and says that Highland would leave it up</p> <p>15 to BH Equities because, as he understood it,</p> <p>16 "we do plan to amend anyways; however, if you</p> <p>17 want it slip paged in the meantime, we can do</p> <p>18 that."</p> <p>19 Have I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. But no amendment was ever executed,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. No agreement was ever reached on a</p> <p>25 modification of any kind to BH Equities'</p>	<p>Page 101</p>

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 residual interest in SE Multifamily, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know if a slip page was ever</p> <p>5 inserted into the agreement to make the small</p> <p>6 change that BH Equities identified to its</p> <p>7 capital contribution?</p> <p>8 A. I believe it was.</p> <p>9 Q. So Highland was responsive to</p> <p>10 BH Equities' request that Schedule A be changed</p> <p>11 to accurately reflect BH Equities' capital</p> <p>12 contribution; is that fair?</p> <p>13 A. Yes.</p> <p>14 Q. Did Highland ever ask BH Equities to</p> <p>15 make any change to Schedule A at any time after</p> <p>16 the agreement was executed on March 15, 2019?</p> <p>17 A. There was correspondence as KeyBank</p> <p>18 was paid back in that process and as other</p> <p>19 assets were sold to get -- get things right as,</p> <p>20 you know, contributions were paid back along</p> <p>21 the way. So there was back-and-forth</p> <p>22 correspondence. I don't know if it was</p> <p>23 specific to update Schedule A, per se, but</p> <p>24 there were iterative communications ensuring</p> <p>25 that the capital that was put in was the</p>	Page 102	Page 103
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. It is.</p> <p>3 Q. And is this again pointing out that</p> <p>4 \$250 million of tranche B was considered</p> <p>5 contributable capital by HCRE?</p> <p>6 A. Yes.</p> <p>7 Q. And by August of 2020, that \$250</p> <p>8 million had been paid back; is that right?</p> <p>9 A. Yes, that's my understanding.</p> <p>10 Q. So that approximately \$39 million of</p> <p>11 original capital that was credited to HCRE had</p> <p>12 yet to be returned; is that right?</p> <p>13 A. Yes, that's my understanding at that</p> <p>14 time.</p> <p>15 Q. Okay. And do you recall that in the</p> <p>16 fall of 2020, there were discussions about the</p> <p>17 return of capital?</p> <p>18 A. Yeah. In that rough time frame, yes.</p> <p>19 MR. MORRIS: Okay. Let's go to the</p> <p>20 next exhibit, 482 through 485.</p> <p>21 MR. DOHERTY: Mr. Morris, is it -- I</p> <p>22 just wanted to ask about another break or</p> <p>23 lunch break. I don't know, it's your</p> <p>24 presentation, your deposition. I know</p> <p>25 it's around noon. It's been an hour.</p>	Page 104	Page 105

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 MR. DOHERTY: I just got a call from</p> <p>3 my -- a personal call. I wanted to be</p> <p>4 able to call it back. I can jump back on.</p> <p>5 MR. MORRIS: You go take that --</p> <p>6 Let's go off the record, please.</p> <p>7 MR. DOHERTY: Yeah, sorry, off the</p> <p>8 record.</p> <p>9 (Recess taken 12:07 p.m. Central Time</p> <p>10 - 12:17 p.m. Central Time.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. So we're at Exhibit 11, Bates number</p> <p>13 482 to 485. You know what, I'm going to</p> <p>14 withdraw this exhibit. So just leave a blank</p> <p>15 in the transcript -- yeah, just leave a blank</p> <p>16 simply because it's redundant.</p> <p>17 Let's shift topics, because I've only</p> <p>18 got a little bit left here, to the topic of</p> <p>19 distributions, Mr. Thomas. Do you recall that</p> <p>20 that's one of the 30(b)(6) topics that we had</p> <p>21 written about?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And I think we just confirmed</p> <p>24 that in the fall of 2020, there were</p> <p>25 discussions between Highland and BH Equities</p>	Page 106	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 concerning the return of capital. Do you</p> <p>3 remember that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 (Exhibit 12 marked.)</p> <p>7 MR. MORRIS: So let's put up what's</p> <p>8 been marked as Exhibit 12, which is a</p> <p>9 document with Bates number BH 192 to -94.</p> <p>10 And if we could start at the bottom.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you see that Mr. Mulcahy</p> <p>13 sent an e-mail on Saturday, November 7th to</p> <p>14 Bonner McDermett and Paul Broaddus with copies</p> <p>15 to you and Phyllis Jones?</p> <p>16 A. Yes.</p> <p>17 Q. I don't think we've seen</p> <p>18 Mr. McDermett's name before. Do you know who</p> <p>19 Mr. McDermett is?</p> <p>20 A. I don't know his exact title, but he</p> <p>21 has been a correspondent with various</p> <p>22 properties that we've worked with the Highland</p> <p>23 entities before, kind of in an acquisition and</p> <p>24 somewhat asset management type role.</p> <p>25 Q. And how about Ms. Jones? Who is</p>	Page 107
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 that?</p> <p>3 A. She's the CFO of BH Companies.</p> <p>4 Q. And was there discussions within BH</p> <p>5 prior to November 7th concerning BH's desire to</p> <p>6 have its capital returned?</p> <p>7 A. Yes.</p> <p>8 Q. And did BH Equities express that to</p> <p>9 Highland in or before November 2020?</p> <p>10 A. I don't know the first time it would</p> <p>11 have been expressed, but, you know, it</p> <p>12 wasn't -- it was a fairly known fact that we</p> <p>13 would like to get our capital back.</p> <p>14 Q. Okay. And the subject of this</p> <p>15 e-mail, indeed, is called, quote, Unicorn</p> <p>16 proposed distribution and detail schedules. Do</p> <p>17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And in the second paragraph,</p> <p>20 Mr. Mulcahy references requested detail as well</p> <p>21 as a, quote, updated distribution calculation.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have an understanding of what</p> <p>25 a distribution calculation is?</p>	Page 108	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding of that</p> <p>4 term?</p> <p>5 A. Just the -- the split of the next</p> <p>6 dollars going out, who is going to get what</p> <p>7 from -- from the next amount that would be</p> <p>8 distributed.</p> <p>9 Q. And did BH Equities maintain a</p> <p>10 distribution calculation that it updated from</p> <p>11 time to time as circumstances changed?</p> <p>12 A. Yeah, based on our understanding of</p> <p>13 the agreements, we did.</p> <p>14 Q. And did Highland ask BH Equities to</p> <p>15 do that, or is that something that BH Equities</p> <p>16 just did of its own accord?</p> <p>17 A. I believe we did it on our own</p> <p>18 accord.</p> <p>19 Q. And did BH Equities share their</p> <p>20 distribution calculations with Highland from</p> <p>21 time to time?</p> <p>22 A. Yes.</p> <p>23 Q. And, in fact, it wasn't attached to</p> <p>24 this particular document, but Mr. Mulcahy wrote</p> <p>25 to Highland on November 7th that he was</p>	Page 109

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 attaching an updated distribution calculation.</p> <p>3 Have I read that fairly?</p> <p>4 A. Yes.</p> <p>5 Q. And do you see that the updated</p> <p>6 distribution calculation was for BH, HCRE, and</p> <p>7 HCM?</p> <p>8 A. I'd need to see the document, but</p> <p>9 that would be in line with what I understand</p> <p>10 from that document.</p> <p>11 Q. Okay. And it's your understanding</p> <p>12 that BH refers to BH Equities, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And HCRE refers to HCRE Partners,</p> <p>15 LLC, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And HCM refers to Highland Capital</p> <p>18 Management, L.P., correct?</p> <p>19 A. Yes.</p> <p>20 Q. And was it BH Equities' intention to</p> <p>21 create a distribution calculation that was</p> <p>22 consistent with the terms and provisions of the</p> <p>23 amended agreement?</p> <p>24 A. As we understood them, yes.</p> <p>25 Q. Okay. And as BH Equities understood</p>	Page 110	Page 111
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 responded the following Tuesday to that e-mail,</p> <p>3 and he added Matt McGraner and DC Sauter to the</p> <p>4 thread. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know who Mr. Sauter is?</p> <p>7 A. Yes.</p> <p>8 Q. Who is Mr. Sauter?</p> <p>9 A. He is legal counsel within NexPoint,</p> <p>10 HCRE, those entities.</p> <p>11 Q. Had BH Equities dealt with Mr. Sauter</p> <p>12 on Project Unicorn before November 2020?</p> <p>13 A. Yes. I don't know -- at one point he</p> <p>14 was with Wick Phillips as well. And I don't</p> <p>15 know exactly when he made his transition, but</p> <p>16 he was involved either as outside counsel or</p> <p>17 internal, you know, several times throughout</p> <p>18 the deal.</p> <p>19 Q. Okay. And Mr. McDermott told</p> <p>20 Mr. Mulcahy and the others copied on the</p> <p>21 e-mail, including yourself, that he presented</p> <p>22 BH Equities' proposed distribution and set of</p> <p>23 facts to Mr. McGraner and Mr. Sauter, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And a couple of days later, BH</p>	Page 112	Page 113
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 the terms and provisions of the amended</p> <p>3 agreement on or around November 7th, it</p> <p>4 prepared a distribution calculation that showed</p> <p>5 the return of capital to each of the three</p> <p>6 members of SE Multifamily, correct?</p> <p>7 A. I -- I'd prefer to see the document</p> <p>8 to state in the affirmative on that, but that</p> <p>9 would be in line with, you know, my</p> <p>10 understanding.</p> <p>11 Q. And it's in line with what</p> <p>12 Mr. Mulcahy wrote, correct?</p> <p>13 A. Yes.</p> <p>14 Q. There's no question in BH Equities'</p> <p>15 mind that Mr. Mulcahy told Highland on</p> <p>16 November 7, 2020 that it had an updated</p> <p>17 distribution calculation for BH Equities, HCRE,</p> <p>18 and HCMLP. Fair?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 MR. MORRIS: Let's -- let's go up to</p> <p>22 the response to that, if we could scroll</p> <p>23 up.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. And you'll see that Mr. McDermott</p> <p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Equities hadn't received a response, so</p> <p>3 Mr. Mulcahy followed up, is that fair, on</p> <p>4 November 12th, in the e-mail above, if we can</p> <p>5 scroll up?</p> <p>6 A. Yes, I see that.</p> <p>7 Q. Okay. Okay. Let's see what the</p> <p>8 response to that is. All right. I'm just</p> <p>9 going to read the paragraph out loud, and then</p> <p>10 I'm going to ask you some questions about it.</p> <p>11 "On November 19th, 2020, Mr. McDermott told</p> <p>12 you, Mr. Mulcahy, and Ms. Jones, among others,</p> <p>13 quote, we have confirmed internally that we are</p> <p>14 standing by our position that distributions may</p> <p>15 be returned to BH and HCRE in order to</p> <p>16 extinguish their debts. But the HCMLP</p> <p>17 bankruptcy is temporarily inhibiting our</p> <p>18 ability to distribute a return of equity at</p> <p>19 this time. DC Sauter and our team are working</p> <p>20 toward a solution there and we will get back to</p> <p>21 you as soon as we have clearance to move</p> <p>22 forward with additional distributions (return</p> <p>23 of equity and profits)."</p> <p>24 Have I quoted that correctly?</p> <p>25 A. Yes.</p>		

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Q. Okay. Let's just take this in</p> <p>3 pieces. At this moment in time, BH Equities</p> <p>4 wanted their capital back, right?</p> <p>5 A. Correct.</p> <p>6 Q. And Highland was refusing to do that,</p> <p>7 correct?</p> <p>8 A. In whole, yes.</p> <p>9 Q. Okay. And their position was that,</p> <p>10 quote, distributions may be returned to B&amp;H and</p> <p>11 HCRE in order to extinguish their debts. Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have an understanding as to</p> <p>15 what debts are being referred to there?</p> <p>16 A. I do.</p> <p>17 Q. What debts are being referred to?</p> <p>18 A. BH is part of our \$21 million --</p> <p>19 \$21.2 or \$21.5 million. Had a \$15 million line</p> <p>20 of credit or debt facility that was drawn to</p> <p>21 make that investment, and I believe HCRE, it</p> <p>22 was determined that the entirety of its, you</p> <p>23 know, 39 or \$40 million amount was also</p> <p>24 borrowed from NexVest Bank and that that's what</p> <p>25 we were -- what extinguished their debts is</p>	Page 114	Page 115
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 that only amounts sufficient to repay</p> <p>3 third-party debt would be permitted, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And then the next sentence</p> <p>6 says, "But the HCMLP bankruptcy is temporarily</p> <p>7 inhibiting our ability to distribute a return</p> <p>8 of equity at this time."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know what they meant by that?</p> <p>12 A. No. Not -- we were not in the weeds,</p> <p>13 so to speak, on that.</p> <p>14 Q. Did BH Equities ever ask Highland or</p> <p>15 anybody acting on behalf of HCRE why the HCMLP</p> <p>16 bankruptcy would inhibit HCRE's ability to</p> <p>17 distribute a return of equity in November 2020?</p> <p>18 A. I don't know that we asked that</p> <p>19 directly. We knew it was a tricky situation</p> <p>20 and were somewhat deferential to it.</p> <p>21 Q. When did BH Equities learn that</p> <p>22 Highland was in bankruptcy?</p> <p>23 A. I don't know a specific date, but it</p> <p>24 would have been, you know, shortly after the</p> <p>25 filing, as it started to make the public</p>	Page 116	Page 117

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 bankruptcy filing would have on HCRE's ability</p> <p>3 to make distributions in accordance with the</p> <p>4 amended agreement.</p> <p>5 A. I don't know of anything that</p> <p>6 specific. We were very focused at the time on</p> <p>7 continuing the process to get KeyBank paid off</p> <p>8 and then kind of taking it stride by stride,</p> <p>9 given the complication of this very complex</p> <p>10 transaction.</p> <p>11 Q. Okay. Had anybody acting on behalf</p> <p>12 of HCRE informed anybody acting on behalf of</p> <p>13 BH Equities prior to November 19th, 2020 that</p> <p>14 the HCMLP bankruptcy would have any impact at</p> <p>15 all on the ability to make distributions?</p> <p>16 MR. DOHERTY: Objection, form.</p> <p>17 A. Could you repeat the question?</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Sure. BH Equities is being told in</p> <p>20 this e-mail that, quote, the HCMLP bankruptcy</p> <p>21 is temporarily inhibiting our ability to</p> <p>22 distribute a return of equity at this time.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Had anybody acting on behalf of HCRE</p>	Page 118	Page 119
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. And then in the next sentence</p> <p>4 it says that DC Sauter and our team are working</p> <p>5 toward a solution.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Did they ever explain -- did anybody</p> <p>9 acting on behalf of HCRE ever explain to</p> <p>10 BH Equities what the solution was?</p> <p>11 A. No. Not to my knowledge.</p> <p>12 Q. Did BH Equities ever ask Highland or</p> <p>13 HCRE what the solution was that Mr. Sauter was</p> <p>14 working towards?</p> <p>15 A. I don't know if we had a specific</p> <p>16 question or conversation about that within the</p> <p>17 firm.</p> <p>18 Q. So if we scroll up, you'll see that</p> <p>19 Mr. McDermett, I guess, re-sent his e-mail with</p> <p>20 an attachment. I don't believe that was</p> <p>21 attached to the document that we received. But</p> <p>22 in any event, Mr. Mulcahy responded at the top</p> <p>23 of the e-mail chain. And is it fair to say</p> <p>24 that in substance --</p> <p>25 MR. MORRIS: I think if we could keep</p>	Page 120	Page 121

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Exhibit 13 is a two-page document Bates</p> <p>3      numbered BH 173 to 174. The second page is</p> <p>4      just an icon. And at that e-mail at the bottom</p> <p>5      of the first page, Mr. Mulcahy is raising the</p> <p>6      exact same issue that he had raised seven</p> <p>7      months earlier, and that is BH Equities wanted</p> <p>8      the return of its capital; is that fair?</p> <p>9      A. Yes.</p> <p>10     Q. Okay. And, in fact, that</p> <p>11    \$6.258 million that he refers to in his e-mail,</p> <p>12    that's the same amount that he referred to in</p> <p>13    his e-mail back in November of 2020, because no</p> <p>14    capital had been distributed since that time,</p> <p>15    correct?</p> <p>16    A. Correct.</p> <p>17    Q. And BH Equities pointed out that SE</p> <p>18    Multifamily had \$8 million in its bank account,</p> <p>19    and so it wanted every dollar of invested but</p> <p>20    unreturned capital repatriated to it, correct?</p> <p>21    A. Yes.</p> <p>22    Q. And if you scroll up, Mr. McDermett</p> <p>23    again calls others to the table, in this case</p> <p>24    Mr. McGraner and Rob Harris. Do you see that?</p> <p>25    A. Yes.</p>	<p>Page 122</p> <p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Q. And at the top, Mr. McGraner -- no,</p> <p>3      withdrawn.</p> <p>4      At the top, Mr. McDermett informs</p> <p>5      Mr. Mulcahy that Mr. McGraner has approved the</p> <p>6      repatriation of the remaining unpaid capital to</p> <p>7      BH Equities. Do I have that right?</p> <p>8      A. Yes.</p> <p>9      Q. And so, in fact, in June of 2021,</p> <p>10     BH Equities got the last of its capital</p> <p>11    investment out of SE Multifamily, correct?</p> <p>12    A. Yes.</p> <p>13    Q. Does SE -- withdrawn.</p> <p>14    Does BH Equities know whether all of</p> <p>15    HCRE's original capital contribution has been</p> <p>16    repatriated?</p> <p>17    A. We believe it has at that point.</p> <p>18    Q. Does BH Equities know whether the</p> <p>19    capital contribution made by Highland Capital</p> <p>20    Management was returned to it?</p> <p>21    A. As of the date of this e-mail, we</p> <p>22    don't believe it has.</p> <p>23    Q. Do you know when HCRE's capital</p> <p>24    contribution was repatriated in full? When was</p> <p>25    either the month or at least the year when HCRE</p>
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      had all of its capital returned or at least</p> <p>3      credited to it?</p> <p>4      A. I believe -- my apologies. We're</p> <p>5      talking about HCRE, correct?</p> <p>6      Q. Yes.</p> <p>7      A. I believe it was in 2020 when they</p> <p>8      had received all of their invested capital</p> <p>9      back.</p> <p>10     Q. So -- and is that because all of</p> <p>11    their invested capital, to the best of</p> <p>12    BH Equities' understanding, was borrowed from</p> <p>13    third parties?</p> <p>14    A. Yes.</p> <p>15    Q. And so the deal was to repatriate all</p> <p>16    capital contributions that were sourced from</p> <p>17    third parties, correct?</p> <p>18    A. Yes.</p> <p>19    Q. So it's BH Equities' understanding</p> <p>20    that HCRE did not put in any of its own capital</p> <p>21    in connection with the funding of</p> <p>22    SE Multifamily, correct?</p> <p>23    A. Its own capital being that that</p> <p>24    wasn't borrowed from a third party, yes, that's</p> <p>25    correct.</p>	<p>Page 124</p> <p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Q. Okay. And that's why it got paid --</p> <p>3      well, withdrawn.</p> <p>4      That's why it was credited with the</p> <p>5      return of all of its capital before</p> <p>6      BH Equities; is that fair?</p> <p>7      A. Yes.</p> <p>8      MR. DOHERTY: Mr. Morris -- and you</p> <p>9      can tell me -- I believe that the witness</p> <p>10     misunderstood a question a couple back</p> <p>11    about Highland Capital. I can --</p> <p>12    MR. MORRIS: Sure, go ahead.</p> <p>13    MR. DOHERTY: -- identify it now.</p> <p>14    Okay. You asked about whether he</p> <p>15    knew Highland Capital had been -- had</p> <p>16    their capital returned, the 49,000; is</p> <p>17    that right?</p> <p>18    MR. MORRIS: Yep.</p> <p>19    MR. DOHERTY: And then I think</p> <p>20    Mr. Thomas said as of -- he, I think,</p> <p>21    added a qualifier, as of the date of this</p> <p>22    e-mail it hadn't.</p> <p>23    MR. MORRIS: Right.</p> <p>24    MR. DOHERTY: But did you mean</p> <p>25    what -- so was that the intent of your</p>

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 question, or was it had it been returned</p> <p>3 at all?</p> <p>4 MR. MORRIS: I appreciate that.</p> <p>5 Well, let me try and clean that up, Casey.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Mr. Thomas, as of the time that --</p> <p>8 withdrawn.</p> <p>9 Do you know whether HCMLP's \$49,000</p> <p>10 was original out-of-pocket capital or whether</p> <p>11 HCMLP borrowed that money as that third-party</p> <p>12 debt?</p> <p>13 A. I don't know for certain, as we</p> <p>14 haven't traced the source, but we're led to</p> <p>15 believe that it was not borrowed capital.</p> <p>16 Q. Okay. So in 2020, all borrowed</p> <p>17 capital was paid back in full, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And to the best of BH Equities'</p> <p>20 knowledge, all of HCRE's capital was borrowed,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And by June 2021, all of BH Equities'</p> <p>24 capital contribution was paid back or credited</p> <p>25 in full, correct?</p>	Page 126	Page 127
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Q. Did BH Equities ask that question?</p> <p>3 A. I don't believe so.</p> <p>4 Q. All right. Let's go to -- just two</p> <p>5 more documents, sir. Let's start with some tax</p> <p>6 returns.</p> <p>7 (Exhibit 14 marked.)</p> <p>8 MR. MORRIS: Can we go to Exhibit 14,</p> <p>9 which is BH 10 through 75.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Are you aware that BH Equities</p> <p>12 produced in response to the subpoena</p> <p>13 SE Multifamily's tax returns, including K-1s</p> <p>14 for 2019?</p> <p>15 A. Yes.</p> <p>16 Q. And did you review those in</p> <p>17 preparation for today's deposition?</p> <p>18 A. Yes.</p> <p>19 Q. And the document that's on the screen</p> <p>20 is a cover letter. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is BH Equities aware that a firm</p> <p>23 called Barker Viggato prepared the tax returns</p> <p>24 for SE Multifamily?</p> <p>25 A. Yes.</p>	Page 128	Page 129

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Q. Okay. Is it BH Equities'</p> <p>3      understanding that the manager was responsible</p> <p>4      for providing the information that Barker</p> <p>5      Viggato needed to prepare SE Multifamily's tax</p> <p>6      returns?</p> <p>7      A. Yes.</p> <p>8      Q. Has Barker Viggato been the firm that</p> <p>9      has prepared SE Multifamily's tax returns since</p> <p>10     SE Multifamily was formed in August of 2018?</p> <p>11     A. I don't recall specifically if they</p> <p>12     did the 2018 return. I do know they did '19</p> <p>13     and '20.</p> <p>14     Q. I appreciate the specificity.</p> <p>15     So we can take a look at anything you</p> <p>16     want in this document. If we turn to the next</p> <p>17     page, we'll see that it says 2019 Tax Return</p> <p>18     Filing Instructions. Do you see that?</p> <p>19     A. Yep.</p> <p>20     Q. Do you know if SE Multifamily's tax</p> <p>21     returns for 2019 were ever amended?</p> <p>22     A. Not to my knowledge.</p> <p>23     Q. Did BH Equities have any discussions</p> <p>24     with anybody at any time over whether</p> <p>25     SE Multifamily's 2019 tax returns should be</p>	<p>Page 130</p> <p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      amended?</p> <p>3      A. Could you scroll in here? There</p> <p>4      should be the allocation of BH Equities in</p> <p>5      this. And in one of the years -- and I don't</p> <p>6      recall if it was '19 or '20 -- we did have a</p> <p>7      question about, you know, allocations. So...</p> <p>8      Q. Okay. And would that be the K-1?</p> <p>9      A. Yes.</p> <p>10     Q. Okay. We'll get to that in just a</p> <p>11     moment, and then we'll come back to the</p> <p>12     question of amendment at that time.</p> <p>13     Are you aware that K-1s for each of</p> <p>14     the members of SE Multifamily were included in</p> <p>15     the package of documents prepared by Barker</p> <p>16     Viggato?</p> <p>17     A. Yes.</p> <p>18     Q. Did BH Equities -- withdrawn.</p> <p>19     Do you know whether any K-1 that was</p> <p>20     issued to any member of SE Multifamily was ever</p> <p>21     amended?</p> <p>22     A. Not to my knowledge.</p> <p>23     MR. MORRIS: Let's go to Bates number</p> <p>24     17, please. And if we could scroll down</p> <p>25     to line 19a. Yeah, there you go.</p>
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      BY MR. MORRIS:</p> <p>3      Q. Do you see 19a refers to</p> <p>4      distributions of cash and marketable</p> <p>5      securities?</p> <p>6      A. Yes.</p> <p>7      Q. And the number there is \$267 million?</p> <p>8      Do you see that?</p> <p>9      A. Yes.</p> <p>10     Q. Is that the return of the third-party</p> <p>11     debt that we've been talking about, if you</p> <p>12     know?</p> <p>13     A. The majority of it would have been,</p> <p>14     yes.</p> <p>15     Q. Okay. Do you know what portion of</p> <p>16     that would have related to a distribution other</p> <p>17     than the repayment of third-party debt?</p> <p>18     A. I don't specifically without, you</p> <p>19     know, referencing the work papers or things</p> <p>20     like that.</p> <p>21     Q. Okay. Hold on one sec.</p> <p>22     Do you know, who authorizes the</p> <p>23     making of distributions on behalf of SE</p> <p>24     Multifamily?</p> <p>25     A. The manager would do that.</p>	<p>Page 132</p> <p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      Q. And who does BH Equities understand</p> <p>3      the manager to be?</p> <p>4      A. HCRE Partners.</p> <p>5      Q. Let's go to Bates number 21, please.</p> <p>6      MR. DOHERTY: When you're saying</p> <p>7      Bates 21, Mr. Morris, is that our Bates</p> <p>8      numbering? Okay, thank you. Okay.</p> <p>9      BY MR. MORRIS:</p> <p>10     Q. So this is Schedule B-1. Do you see</p> <p>11     that?</p> <p>12     A. Yes.</p> <p>13     Q. And Highland Capital Management, L.P.</p> <p>14     is identified as an entity owning 50 percent or</p> <p>15     more of the partnership. Do you see that?</p> <p>16     A. Yes.</p> <p>17     Q. And Highland Capital Management,</p> <p>18     L.P.'s interest is fixed at 94 percent. Do you</p> <p>19     see that?</p> <p>20     A. Yes.</p> <p>21     Q. And is it BH Equities' understanding</p> <p>22     that that 94 percent is a reference to that</p> <p>23     Section 6.4 where 94 percent of the profits and</p> <p>24     losses are allocated to HCMLP?</p> <p>25     A. Yes.</p>

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Q. Okay. Any reason to believe that</p> <p>3 this portion of the tax return is incorrect or</p> <p>4 mistaken?</p> <p>5 A. No.</p> <p>6 Q. Okay. Nobody ever suggested to you</p> <p>7 that this page should be amended, correct?</p> <p>8 A. No.</p> <p>9 Q. All right.</p> <p>10 MR. MORRIS: Let's go to – let's</p> <p>11 jump to 55.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Do you see that this is the K-1 for</p> <p>14 HCMLP?</p> <p>15 A. Yes.</p> <p>16 Q. And do you see that, if we can scroll</p> <p>17 down just a little bit, that the profits and</p> <p>18 losses for HCMLP with respect to SE Multifamily</p> <p>19 were approximately 90.6 percent at the</p> <p>20 beginning of 2016 and they remained at 90.6</p> <p>21 percent at the end of that year?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any understanding as to</p> <p>24 why it wasn't 94 percent, as set forth in the</p> <p>25 agreement?</p>	Page 134	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. No.</p> <p>3 Q. Okay. Do you see that Highland's</p> <p>4 capital percentage is fixed at 46.06 at the</p> <p>5 beginning of 2019 and it remained at 46.06 at</p> <p>6 the end of the year?</p> <p>7 A. Yes.</p> <p>8 Q. Is that consistent with your</p> <p>9 understanding of the residual interest that</p> <p>10 Highland Capital Management, L.P. has in</p> <p>11 SE Multifamily?</p> <p>12 A. Yes.</p> <p>13 Q. And did anybody ever tell you that</p> <p>14 that capital percentage was incorrect or</p> <p>15 mistaken in any way?</p> <p>16 A. No.</p> <p>17 Q. And do you see that in the – in the</p> <p>18 Box K, Partner's Share of Liabilities, at the</p> <p>19 beginning of the year there was qualified</p> <p>20 nonrecourse financing of over \$336 million to</p> <p>21 HCMLP?</p> <p>22 A. Yes.</p> <p>23 Q. And that by the end of the year it</p> <p>24 was reduced to an amount just less than a</p> <p>25 hundred million dollars. Do you see that?</p>	Page 135
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 A. Yes.</p> <p>3 Q. Did BH Equities understand that</p> <p>4 Highland Capital Management, L.P. was a</p> <p>5 guarantor and was jointly and severally liable</p> <p>6 under the KeyBank loan?</p> <p>7 A. I don't know if we had that specific</p> <p>8 knowledge. I don't believe so.</p> <p>9 Q. Okay. Do you know whether the</p> <p>10 reduction of approximately \$238 million in the</p> <p>11 qualified nonrecourse financing related to the</p> <p>12 return of capital to KeyBank under the KeyBank</p> <p>13 loan?</p> <p>14 A. Based on my understanding, that is</p> <p>15 not what that would be related to.</p> <p>16 Q. Do you know what it's related to?</p> <p>17 A. Typically, the qualified nonrecourse</p> <p>18 financing relates to nonrecourse financing on</p> <p>19 the properties underneath the entity, and if</p> <p>20 there were properties being sold and those</p> <p>21 debts being extinguished, that would naturally</p> <p>22 go down.</p> <p>23 Q. Is it BH Equities' understanding that</p> <p>24 at the beginning of 2019, Highland Capital</p> <p>25 Management, L.P. was liable on a qualified</p>	Page 136	<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 nonrecourse basis to the tune of \$336 million</p> <p>3 in connection with the property that was</p> <p>4 acquired by SE Multifamily?</p> <p>5 A. Liable throws me off in there because</p> <p>6 of it being nonrecourse financing.</p> <p>7 Q. All right. I'm going to – I'm going</p> <p>8 to pretend – I'm not going to pretend.</p> <p>9 Do you see Section K is entitled</p> <p>10 Partner's Share of Liabilities?</p> <p>11 A. Yes.</p> <p>12 Q. You know what, I'll ask this of</p> <p>13 somebody else.</p> <p>14 Can we – actually, let's just stay</p> <p>15 here. And then there's a Partner Capital</p> <p>16 Account Analysis in Box L. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And did BH Equities have any</p> <p>19 information relating to the partners' capital</p> <p>20 accounts?</p> <p>21 A. No, I don't believe so.</p> <p>22 Q. Okay. Do you see that Highland is</p> <p>23 shown as having a capital account worth \$15.555</p> <p>24 million at the end of 2019?</p> <p>25 A. Yes.</p>	Page 137

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 Q. Okay. Does BH Equities have any</p> <p>3 reason to believe that that's a mistake?</p> <p>4 A. No.</p> <p>5 Q. Okay. Has anybody ever told</p> <p>6 BH Equities that they believe Highland had a</p> <p>7 capital account at the end of 2019 that was</p> <p>8 something other than the number represented in</p> <p>9 Box L on Bates-numbered page BH 55?</p> <p>10 A. No.</p> <p>11 MR. MORRIS: Can we scroll back up</p> <p>12 further to the top of this page?</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you see that in Box 2, over \$30</p> <p>15 million of rental income is being passed</p> <p>16 through to Highland from SE Multifamily?</p> <p>17 A. Yes.</p> <p>18 Q. And is it BH Equities' understanding</p> <p>19 that that number in Box 2 should represent</p> <p>20 90.6119893 percent of SE Multifamily's profits</p> <p>21 in 2019?</p> <p>22 MR. DOHERTY: Objection, form.</p> <p>23 A. Yeah, it's a little nuanced, and I'm</p> <p>24 not a CPA nor have access to work papers, so I</p> <p>25 can't specifically say that that -- that number</p>	<p>Page 138</p>	<p>Page 139</p>
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 the year, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that's consistent with the</p> <p>5 residual interest that we saw on Schedule A to</p> <p>6 the amended agreement, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And then if you look to the</p> <p>9 right in Box 19 -- well, actually, if you look</p> <p>10 up in Box 2, you'll see there's nothing there,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. So that none of SE Multifamily's</p> <p>14 profits were passed through to HCRE or its</p> <p>15 successor, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And Box 19 in the Distributions, that</p> <p>18 \$250 million was the money that was paid back</p> <p>19 to HCRE in 2019 so that it could pay off the</p> <p>20 KeyBank loan, tranche B, correct?</p> <p>21 A. Potentially with other distributions,</p> <p>22 but, yes, but it would have been the total</p> <p>23 distributions received and then applied to</p> <p>24 KeyBank or other sources.</p> <p>25 Q. Are you aware of any distributions</p>	<p>Page 140</p>	<p>Page 141</p>

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      A. Correct.</p> <p>3      Q. And nobody ever suggested that either</p> <p>4      HCMLP's or HCRE's or BH Equities' 2019 K-1s</p> <p>5      were incorrect in any way, correct?</p> <p>6      A. Correct.</p> <p>7      Q. Okay. Do you see there's a</p> <p>8      distribution there in Box 19 of \$46,000?</p> <p>9      A. Yes.</p> <p>10     Q. Do you have any idea why BH Equities'</p> <p>11    K1 for 2019 shows that it received a</p> <p>12    distribution of \$46,926?</p> <p>13    A. No, other than seeing there's a</p> <p>14    footnote A or a notation A next to it, which</p> <p>15    may have more description.</p> <p>16    MR. DOHERTY: Mr. Morris, can you</p> <p>17    show the witness A? May I ask that?</p> <p>18    MR. MORRIS: Yeah, I'm looking for</p> <p>19    it. I actually – if we could scroll</p> <p>20    down, the next – the next page is Code Z.</p> <p>21    The next page -- I don't see it there.</p> <p>22    Yeah, I don't see it. So I'll just move</p> <p>23    on. I can only work with what I have.</p> <p>24    BY MR. MORRIS:</p> <p>25    Q. And then let's go to Bates number 70,</p>	<p>Page 142</p> <p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      please. And this is the K-1 for Liberty,</p> <p>3      correct?</p> <p>4      A. Yes.</p> <p>5      Q. And they have zero percent capital at</p> <p>6      the beginning of the year and at the end of the</p> <p>7      year because they didn't make an equity</p> <p>8      investment in SE Multifamily, correct?</p> <p>9      A. It was a preferred equity investment,</p> <p>10     which would be treated differently.</p> <p>11     Q. Correct. And they got distributions</p> <p>12     of approximately \$17 million, as reflected in</p> <p>13     paragraph -- in Section 19, because they were</p> <p>14     preferred holders and they were entitled to get</p> <p>15     paid first, correct?</p> <p>16     A. Yes.</p> <p>17     Q. Do you know why they were allocated</p> <p>18     3.6 percent of the profits and losses in 2019?</p> <p>19     A. I don't, no.</p> <p>20     Q. Did you know that they were allocated</p> <p>21     3 percent of the profits and losses in 2019</p> <p>22     before now?</p> <p>23     A. Only from reviewing the documentation</p> <p>24     and things.</p> <p>25     Q. No agreement was ever -- no amendment</p>
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      to the amended agreement was ever made to</p> <p>3      change the allocation set forth in Section 6.4,</p> <p>4      right?</p> <p>5      A. Not that I'm aware.</p> <p>6      MR. MORRIS: Let's go to the last</p> <p>7      exhibit, 15, BH 76 to 78.</p> <p>8      (Exhibit 15 marked.)</p> <p>9    BY MR. MORRIS:</p> <p>10    Q. And do you see this is BH Equities'</p> <p>11    K-1 for 2020?</p> <p>12    A. Yes.</p> <p>13    Q. All right. Let's just scroll down a</p> <p>14    little bit. It's just a two-page -- I guess</p> <p>15    it's a three-page document.</p> <p>16    In looking at it, does it refresh</p> <p>17    your recollection -- I had asked you earlier</p> <p>18    whether there was ever any discussion at any</p> <p>19    time about filing an amendment to any of SE</p> <p>20    Multifamily's tax returns or the K-1s at issue.</p> <p>21    Do you remember that question?</p> <p>22    A. Yes, I remember that question.</p> <p>23    Q. And I think you testified that there</p> <p>24    may have been?</p> <p>25    A. We had questions. If you could</p>	<p>Page 144</p> <p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2      scroll up on this. We were curious as to why</p> <p>3      there was no allocation in Box 1 or 2 to</p> <p>4      BH Equities in 2020.</p> <p>5      Q. Oh, okay. So the question was why</p> <p>6      did BH Equities not receive any allocation of</p> <p>7      ordinary business income or net rental income</p> <p>8      from the real estate; is that right?</p> <p>9      A. Correct.</p> <p>10     Q. Did BH Equities ever get an answer to</p> <p>11     that question?</p> <p>12     A. I don't believe we did.</p> <p>13     Q. But BH Equities' allocation of</p> <p>14     profits and losses doesn't seem to have</p> <p>15     changed, right? It's the same 5.78 percent as</p> <p>16     it was in 2019, at least according to the K-1s,</p> <p>17     correct?</p> <p>18     A. Correct.</p> <p>19     Q. Do you know if this K-1 was reported</p> <p>20     to the IRS?</p> <p>21     MR. DOHERTY: Objection, form. What</p> <p>22     is reported? Was it filed, John?</p> <p>23     MR. MORRIS: Yeah, that's a fair</p> <p>24     question.</p> <p>25</p>

1      BH EQUITIES, LLC - D. MILLER 2 BY MR. MORRIS: 3      Q. Yeah. Do you know if this K-1 was 4 ever filed with the IRS? 5      A. I don't. It would have been the 6 manager's responsibility to file the tax return 7 on behalf of the entity, and then BH Equities, 8 given our complex nature, you know, has a very 9 complicated tax return. So its information 10 would have been used in the broader 11 BH Equities' filing, but we wouldn't have sent 12 this directly attached to our tax return, per 13 se. 14      Q. Okay. I appreciate the 15 clarification. 16      Did BH Equities rely on the 17 information in this K-1 to prepare its tax 18 returns for 2020? 19      MR. DOHERTY: Object. I don't -- I'm 20 just making this objection in caution. I 21 think this is a little outside the scope. 22 I mean, I know if you're going places, but 23 if this involves, like, tax advice from 24 attorneys or something, then don't go into 25 detail on that. I just wanted to -- it's	Page 146	Page 147
1      BH EQUITIES, LLC - D. MILLER 2 taxes. 3      Q. Why did BH Equities take a different 4 course? What does that mean? 5      MR. DOHERTY: Objection, form. 6 BY MR. MORRIS: 7      Q. You can answer. 8      MR. DOHERTY: Well, you can answer -- 9 again, I think this is outside the scope, 10 but if it involves outside attorney's 11 advice about your taxes, then you need to 12 be careful if you need to -- if you think 13 you're getting attorney advice, then you 14 need to be careful. 15      A. Yeah, I think it would be just 16 related to internal decision making. 17 BY MR. MORRIS: 18      Q. Internal decision making is not a 19 reason to not share the answer with me. 20      MR. DOHERTY: Mr. Thomas, if it's 21 legal counsel, then -- 22      MR. MORRIS: Then you should say so. 23 Then you should say so. 24      MR. DOHERTY: Right. 25      If you can answer without that, then	Page 148	Page 149

<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2    was an e-mail request -- or an e-mail ask on</p> <p>3    this K-1, and I don't know for sure if Barker</p> <p>4    Viggato people were included or not on that or</p> <p>5    if it was just directed to HCRE.</p> <p>6      Q. Okay.</p> <p>7      MR. MORRIS: If we can scroll down</p> <p>8    just a little bit.</p> <p>9    BY MR. MORRIS</p> <p>10     Q. Do you see Box L?</p> <p>11     A. Yes.</p> <p>12     Q. And there's an ending capital account</p> <p>13    of approximately \$8.5 million. Do you see</p> <p>14    that?</p> <p>15     A. Yes.</p> <p>16     Q. Since all of the original funded</p> <p>17    capital has been returned with the exception of</p> <p>18    Highland's \$49,000, is it fair to say that that</p> <p>19    number, \$8.5 million, equals approximately</p> <p>20    6 percent of the capital accounts among the</p> <p>21    members of SE Multifamily?</p> <p>22     A. The tax capital account, yes. That</p> <p>23    would be my understanding.</p> <p>24     Q. Okay. So that -- would it be</p> <p>25    BH Equities' expectation that HCMLP's capital</p>	Page 150	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2    account would be approximately five to six</p> <p>3    times bigger than that because they have a</p> <p>4    46.06 percent residual interest?</p> <p>5      A. Not necessarily.</p> <p>6      Q. Is there a relationship between</p> <p>7    BH Equities' capital account and the capital</p> <p>8    accounts of the other members, given that all</p> <p>9    of the original capital contributions have been</p> <p>10    paid in full but for HCMLP?</p> <p>11     MR. DOHERTY: Objection. I think</p> <p>12    that mischaracterizes --</p> <p>13     MR. MORRIS: You've got the -- you've</p> <p>14    got the objection. I'm going to cut you</p> <p>15    off this time.</p> <p>16     A. Relationship, yes. But it's not a</p> <p>17    direct linear relationship given how tax --</p> <p>18    given how tax remedies work and allocations of</p> <p>19    profit and loss, capital, those things. So</p> <p>20    it's not a simple linear relationship.</p> <p>21    BY MR. MORRIS:</p> <p>22     Q. All right. Let's shift gears now,</p> <p>23    last topic, no documents. Actually, just hold</p> <p>24    on one second.</p> <p>25     Okay. Let's just shift gears and</p>	Page 151
<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2    finish this up. If we could go back to the</p> <p>3    subpoena, which I think was Exhibit 1. Again,</p> <p>4    page 2 of the exhibit, PDF page 9 of 13. And I</p> <p>5    know I asked a couple of questions, but I said</p> <p>6    we'd come back to it.</p> <p>7      So we're on topic 4, and remember I</p> <p>8    defined what's in the parenthetical there as</p> <p>9    HCRE's contention. Do you remember that?</p> <p>10     A. Yes.</p> <p>11     Q. Okay. Really, I don't have a lot</p> <p>12    here. Do you recall when BH Equities first</p> <p>13    learned of HCRE's contention as set forth in</p> <p>14    topic 4?</p> <p>15     A. I believe it would have been, I don't</p> <p>16    know, a few days after filings or something</p> <p>17    along those lines, as we tried to pay</p> <p>18    attention.</p> <p>19     Q. When do you think it was?</p> <p>20     A. Shortly after the filing of it, once</p> <p>21    it was on the public record.</p> <p>22     Q. And how did -- how did BH Equities</p> <p>23    learn of the contention?</p> <p>24     A. I think we'd been an interested party</p> <p>25    in the case as it relates to SE Multifamily, so</p>	Page 152	<p>1      BH EQUITIES, LLC - D. MILLER</p> <p>2    we were paying attention to the court records</p> <p>3    and things.</p> <p>4      Q. Did BH Equities have any source of</p> <p>5    information other than court records by which</p> <p>6    it learned of HCRE's contention?</p> <p>7      A. I don't believe so.</p> <p>8      Q. Okay. So is it fair to say that to</p> <p>9    the best of your recollection, BH Equities</p> <p>10    relied exclusively on what was on the court</p> <p>11    record in order to learn about HCRE's</p> <p>12    contention?</p> <p>13     A. To the best of my knowledge.</p> <p>14     Q. Okay. Do you know whether BH</p> <p>15    Equities has ever discussed this contention</p> <p>16    with anybody at HCRE?</p> <p>17     A. Not to my knowledge.</p> <p>18     Q. Do you know if anybody acting on</p> <p>19    behalf of BH Equities has ever communicated</p> <p>20    with anybody at HCRE concerning the contentions</p> <p>21    set forth in topic 4?</p> <p>22     A. Not to my knowledge.</p> <p>23     Q. Do you know whether HCRE, in its</p> <p>24    capacity as the manager, has ever done anything</p> <p>25    to address the mistake that's described in its</p>	Page 153

<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 contention other than file with a proof of</p> <p>3 claim?</p> <p>4 A. Not to my knowledge. I don't believe</p> <p>5 so.</p> <p>6 Q. And also with -- they also, at least</p> <p>7 in November 2020, decided to withhold --</p> <p>8 withdrawn.</p> <p>9 Other than responding to the</p> <p>10 subpoena, has BH Equities done anything in</p> <p>11 response to learning about the contentions set</p> <p>12 forth in paragraph -- topic 4?</p> <p>13 MR. DOHERTY: Objection. If this --</p> <p>14 if this involves legal discussions, then</p> <p>15 you are not to answer, but you can follow</p> <p>16 the question.</p> <p>17 A. I don't believe we've taken any --</p> <p>18 any business action in regard to this</p> <p>19 contention.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. Does BH Equities have a view</p> <p>22 as to whether the contention is fair and</p> <p>23 accurate?</p> <p>24 MR. DOHERTY: Objection.</p> <p>25</p>	Page 154	Page 155
<p>1 BH EQUITIES, LLC - D. MILLER</p> <p>2 SE Multifamily improperly allocated the</p> <p>3 ownership percentages of the members thereto</p> <p>4 due to mutual mistake, lack of consideration,</p> <p>5 and/or failure of consideration?</p> <p>6 A. Yes. We do not have a position on</p> <p>7 that.</p> <p>8 MR. MORRIS: I have no further</p> <p>9 questions.</p> <p>10 MR. DOHERTY: Mr. Morris, I'd like to</p> <p>11 ask one or two questions on redirect to</p> <p>12 clarify something. Is that okay to do it</p> <p>13 now, or would you like a --</p> <p>14 MR. MORRIS: No, I think you should</p> <p>15 do it now.</p> <p>16 EXAMINATION</p> <p>17 BY MR. DOHERTY:</p> <p>18 Q. Mr. Thomas, I'm going to ask you a</p> <p>19 couple of questions as if we were in court, you</p> <p>20 know, as you were with Mr. Morris.</p> <p>21 During the testimony, I believe --</p> <p>22 I'm unsure how it came about exactly, but you</p> <p>23 were asked questions that did Highland Capital</p> <p>24 Management ever receive their capital</p> <p>25 contribution back, and you answered at one</p>	Page 156	Page 157

	<p>Page 158</p> <p>1 BH EQUITIES, LLC - D. MILLER  2 MR. GAMEROS: Yes.  3 MR. MORRIS: I'm expediting this.  4 THE REPORTER: Mr. Gameros, did you  5 need it expedited as well?  6 MR. GAMEROS: Yes.  7 (Time noted: 1:23 p.m. Central Time)</p> <p>8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p>15 I, Janice K. McMoran, RDR, CRR, TCCR,  16 and Certified Shorthand Reporter in and for the  17 State of Texas, hereby certify to the following:  18 That the witness, BH EQUITIES, LCC BY AND  19 THROUGH ITS DESIGNATED REPRESENTATIVE DUSTIN  20 "DUSTY" THOMAS, was duly remotely sworn by the  21 officer, and that the transcript of the oral  22 deposition is a true record of the testimony given  23 by the witness;  24 I further certify that pursuant to  25 Federal Rules of Civil Procedure, Rule 30(e)(1)(A)</p>	Page 159
	<p>Page 160</p> <p>1 and (B) as well as Rule 30(e)(2), that review of  2 the transcript and signature of the deponent:  3 <u>X</u> was requested by the deponent or  4 a party before the completion of the deposition and  5 is to be returned within 30 days from date of  6 receipt of the transcript if returned, the  7 attached Errata contains any changes and the  8 reasons therefor;  9 <u>      </u> was not requested by the deponent  10 or a party before the completion of the deposition.  11 I further certify that I am neither  12 counsel for, related to, nor employed by any of the  13 parties or attorneys to the action in which this  14 proceeding was taken. Further, I am not a  15 relative or employee of any attorney of record in  16 this cause, nor am I financially or otherwise  17 interested in the outcome of the action.  18 Subscribed and sworn to on this the 4th  19 day of August, 2022.</p> <p>20  21  22  23 JANICE K. McMORAN, RDR, CRR, TCRR  24 Texas CSR #1959  25 Expiration Date: 2/28/23</p> <p>1 ACKNOWLEDGMENT OF DEPONENT  2  3 I, DUSTIN "DUSTY" THOMAS, do hereby  4 certify that I have read the foregoing pages, and  5 that the same is a correct transcription of the  6 answers given by me to the questions therein  7 propounded, except for the corrections or changes  8 in form or substance, if any, noted in the attached  9 Errata Sheet.</p> <p>10  11  12 _____  13 DUSTIN "DUSTY" THOMAS DATE  14  15  16  17  18  19  20  21  22  23  24  25</p>	Page 161

<p>1 ERRATA SHEET</p> <p>2 Case Name:</p> <p>3 Deposition Date:</p> <p>4 Deponent:</p> <p>5 Pg. No. Now Reads   Should Read   Reason</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20</p> <p>21 _____</p> <p>22      Signature of Deponent</p> <p>SUBSCRIBED AND SWORN BEFORE ME</p> <p>23 THIS _____ DAY OF _____, 2022.</p> <p>24 _____</p> <p>25 (Notary Public) MY COMMISSION EXPIRES:_____</p>	<p>Page 162</p> <p>1 FURTHER CERTIFICATION UNDER RULE 203 TRCP</p> <p>2 The original deposition was/was not returned to the</p> <p>3 deposition officer on _____, 2022;</p> <p>4 If returned, the attached Changes and Signature</p> <p>5 page contains any changes and the reasons therefor;</p> <p>6 If returned, the original deposition was delivered</p> <p>7 to _____, Custodial Attorney;</p> <p>8 That \$_____ is the deposition officer's</p> <p>9 charges to the Defendant for preparing the original</p> <p>10 deposition transcript and any copies of exhibits;</p> <p>11 That the deposition was delivered in accordance</p> <p>12 with Rule 203.3, and that a copy of this certificate was</p> <p>13 served on all parties shown herein on and filed with the</p> <p>14 Clerk.</p> <p>15 Certified to by me this _____ day of</p> <p>16 _____, 2022.</p> <p>17</p> <p>18</p> <p>19      _____ JANICE K. McMORAN, RDR, CRR, TCRR</p> <p>20 TSG Reporting</p> <p>21 Firm Registration No. 615</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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